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COMPRISING
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THE

Gemmell & May,
Ottawa,
A MANUAL ⁵⁷
OF ⁵⁷⁰⁵

COUNTY COURT PRACTICE
IN ONTARIO,

COMPRISING THE STATUTES AND RULES RELATING TO THE
POWERS AND DUTIES OF COUNTY COURT JUDGES,
AND THE JURISDICTION, PROCEDURE AND
PRACTICE OF THE

COUNTY AND DISTRICT COURTS

OF THE PROVINCE OF ONTARIO, AND IN APPEALS
THEREFROM TO THE

COURT OF APPEAL,

WITH DECISIONS IN ONTARIO, NOVA SCOTIA, NEW
BRUNSWICK, MANITOBA AND ENGLAND,

AND THE

COUNTY COURT TARIFF.

BY

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TO THE
County Court Judges
OF THE PROVINCE OF ONTARIO,

A HARD-WORKED AND ILL-PAID PORTION OF
OUR JUDICIARY,

THIS BOOK
IS RESPECTFULLY INSCRIBED.



PREFACE.

IT was not from any belief in my own especial fitness for the task, that I undertook the preparation of this little book, but simply because no one else had taken the trouble to collect into convenient shape, the information contained herein, which was scattered over a large number of volumes. I do not pretend that I have accomplished this work satisfactorily, even to myself, but I have done the best I could, with the time and means at my disposal. The following are the Statutes annotated:—

R. S. O. c. 46. The Local Courts Act.

“ 47. The County Courts Act, and amending Acts.

“ 48. The General Sessions Act, and amending Act.

“ 49. The County Judges Criminal Court Act.

“ 91. The Unorganized Territory Act, (part), and amending Act.

I have not included any of the Consolidated Rules or sections of the Judicature Act, except those applying specifically to the County Courts; so that reference will have to be had to works on High Court practice in all matters in which the County Court practice is, under section 28 of “The County Courts Act,” and Rule 1257, similar to that of the High Court. The numbers of the Rules and sections given, will be found in the Index. I have also omitted a number of the older decisions on questions of practice and costs, as many of them are either inapplicable at present, or are only illustrations of principles fully discussed in more recent cases cited.

I had some doubts about the propriety of adding the County Court Tariff, on account of its being already printed, with the High Court Tariff, in other works; but, after consultation with the publishers, I decided to do so. I have not, however, added any of the cases on the taxation of costs, (as distinguished from the question of the proper scale of costs taxable,) as they are all collected in Mr Widdifield's recent work on taxation.

I have endeavored to collect, at pages 13-14, a list of the principal Statutes imposing duties and conferring powers on County Court Judges, in addition to the Statutes and Rules referred to at length throughout the book. It will be seen that the County Judge is made a kind of judicial pack-horse for the performance of the ever increasing variety of work that our legislators, federal and provincial, see fit to impose on him; though a small portion of the burden has been lifted from his shoulders by the passing of "The Drainage Trials Act" of last session.

I shall gladly welcome criticism on my errors, both of omission and commission, so that I may profit thereby, if the book should ever reach a second edition.

M. J. GORMAN.

Ottawa, January 1892.

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ABBREVIATIONS.

- A. R., Ontario Appeal Reports.
C. L. T., Canadian Law Times.
C. P., Upper Canada Common Pleas.
C. P. D., Common Pleas Division (English).
Con. Rules., Consolidated Rules of Practice.
C. S. U. C., Consolidated Statutes Upper Canada.
Ex., Exchequer Reports.
H. & N., Hurlstone & Norman's Reports.
L. J. N. S., Canada Law Journal, New Series.
L. J. Ex., Law Journal, Exchequer.
L. J. Q. B., Law Journal, Queen's Bench.
L. T. N. S., Law Times, New Series.
Man. L. R., Manitoba Law Reports.
N. B. R., New Brunswick Reports.
N. S. R., Nova Scotia Reports.
O. R., Ontario Reports.
O. S., Queen's Bench, Old Series.
P. R., Ontario Practice Reports.
Q. B., Upper Canada Queen's Bench.
Q. B. D., Queen's Bench Division (English).
Q. B. (1891), Queen's Bench Division (English).
R. S. C., Revised Statutes of Canada, 1886.
R. S. O., Revised Statutes of Ontario, 1887.
Times L. R., Times Law Reports.
W. N., Weekly Notes.

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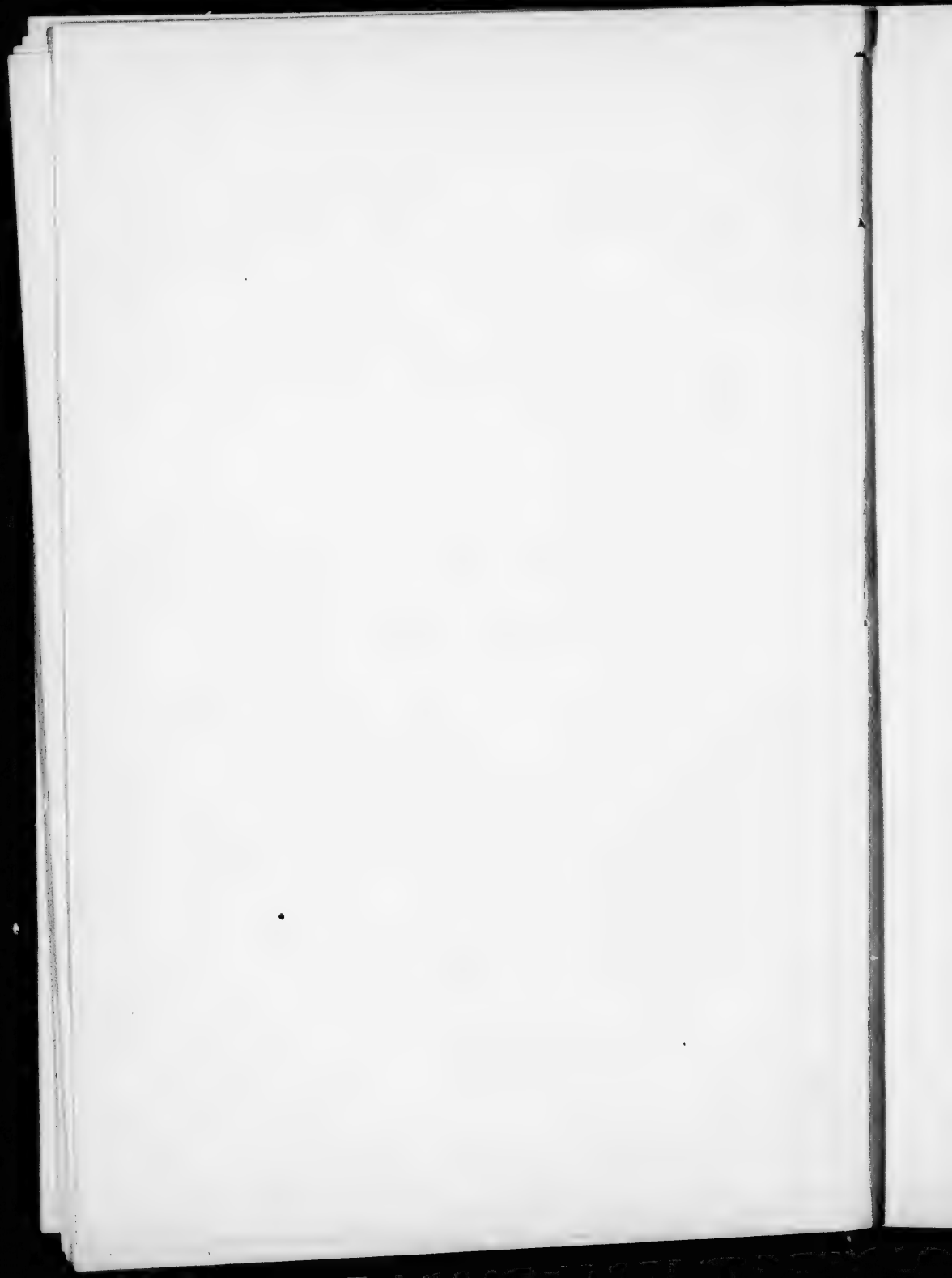
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ADDENDA.

Page 44—Add to note of "Talbot v. Poole": "On appeal to the Queen's Bench Divisional Court, the decision of Street, J., was reversed, on the ground that the defendant had, by his pleading, denied the lease. *Globe*, February 6th, 1892."

" 80—Add to note of "Re McGugan v. McGugan": "An appeal to the court of appeal on another branch of this case was subsequently allowed. 12 C. L. T., p. 69.

" Afterwards an order was made, on application of the defendant Hopkins, for removal of this action from the county court of Elgin to the high court, under 54 V. c. 14. *Globe*, February 2nd, 1892."

Since this book has been printed, the Dominion Statutes of last session (54-55 Vic.), have been issued. Chapter 28, entitled "An Act with respect to certain matters affecting the Administration of Justice," contains amongst other matters, the following provisions, sections 2 and 3 of which are very similar to sections 14, 15 and 16 of the "Local Courts Act," pages 15-16:—

"1. The jurisdiction of every county court judge shall extend and shall be deemed to have always extended to any additional territory annexed by the Provincial Legislature to the county or district for which he was or is appointed, to the same extent as if he were originally appointed for a county or district including such additional territory: Provided that nothing in this section contained shall, in any way, affect any litigation now pending, in the course of which any question has been raised as to the jurisdiction of a judge beyond the limits of the county or district for which he was originally appointed.

"2. It shall be competent for any county court judge to hold any of the courts in any county or district in the Province in which he is appointed, or to perform any other duty of a county court judge in any such county or district, upon being required so to do by an order of the Governor in

Council made at the request of the Lieutenant Governor of such Province; and without any such order the judge of any county court may perform any judicial duties in any county or district in the Province on being requested so to do by the county court judge to whom the duty for any reason belongs; and the judge so required or requested as aforesaid shall, while acting in pursuance of such requisition or request, be deemed to be a judge of the county court of the county or district in which he is so required or requested to act, and shall have all the powers of such judge.

"3. Any retired county court judge of a Province may hold any court or perform any other duty of a county court judge in any county or district of the Province on being authorized so to do by an order of the Governor in Council, made at the request of the Lieutenant Governor of such Province; and such retired judge while acting in pursuance of such order shall be deemed to be a judge of the county or district in which he acts in pursuance of the order, and shall have all the powers of such judge."

In the case of *Reg. v. Piel-ke-ar Kan*, an important question has recently arisen in British Columbia, as to the power of the legislature of that Province to extend or alter the territorial jurisdiction of county court judges, and also as to the constitutionality of certain sections of "The Speedy Trials Act," 52 V. c. 47 (Dom.). The county court judge of Yale, sitting in Kootenay, under the provisions of the Provincial Act, tried and convicted the prisoner; but the Supreme Court of British Columbia discharged him on a Writ of Error. At the request of the Attorney-General of British Columbia, the Minister of Justice, on the 6th of February, 1892, directed a case to be stated for the opinion of the Supreme Court of Canada, as to whether the provisions of the Provincial Act were *ultra vires*, and if so, whether the Federal Statute, 54-55 Vic. cap. 28 above referred to, has validated them, and to what extent; also as to the territorial jurisdiction of a county court judge under the "Speedy Trials Act."

The decision of the Supreme Court of Canada when given, will have an important bearing on the cases cited at pages 16, 17 and 18 of this work.

LOCAL COURTS' ACT.

CHAPTER 46, REVISED STATUTES OF ONTARIO, 1887.

An Act respecting County Judges and the Local Courts.

SHORT TITLE, s. 1.

COUNTY JUDGES AND JUNIOR

JUDGES, ss. 2-6.

DEPUTY JUDGES, ss. 7-9.

OATH OF OFFICE, s. 10.

DUTIES AND POWERS OF

JUDGES, ss. 11-16.

COUNTY COURT DISTRICTS, ss.
17-23.

INTERPRETERS, s. 24.

SHORTHAND WRITERS, s. 25.

LOCAL COURTS OF COUNTY OF
YORK, s. 26.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Local Courts' Act.*" R. S. O. 1877, c. 42, s. 1.

JUDGES AND JUNIOR JUDGES.

2. The judges of the several county courts holding office when this Act takes effect, as well as the judges hereafter to be appointed, shall hold

G.C.C.A.—1

their offices during good behaviour, but shall be subject to be removed by the Lieutenant-Governor for inability, incapacity, or misbehaviour, established to the satisfaction of the Lieutenant-Governor in Council. R. S. O. 1877, c. 42, s. 2.

In *re* Squier, 46 Q. B. 474, this section, which assumed to repeal C. S. U. C. c. 14, and to abolish the Court of Impeachment thereby established, was held to be *ultra vires* of the Provincial Legislature. C. S. U. C. c. 14 was subsequently repealed by 45 V. c. 12 (Dom.), now R. S. C. c. 138; and the following provisions respecting the tenure of office by, and removal of County Judges, were substituted therefor :—

2. Every judge of a county court in any of the Provinces of Canada shall, subject to the provisions of this Act, hold office during good behaviour, and his residence within the county or union of counties for which the court is established :

(2) A judge of a county court may be removed from office by the Governor in Council for misbehaviour, or for incapacity or inability to perform his duties properly, on account of old age, ill health, or any other cause ; if—

(a) The circumstances respecting the misbehaviour, incapacity, or inability are first inquired into ; and—

(b) Such judge is given reasonable notice of the time and place appointed for the enquiry, and is afforded an opportunity, by himself or his counsel, of being heard thereat, and of cross-examining the witnesses, and adducing evidence on his own behalf :

(3) If any such judge is removed from office for any of such reasons, the order in council providing for such removal, and all reports, evidence, and correspondence relating thereto, shall be laid before Parliament within the first fifteen days of the next ensuing session :

(4) The Governor-General in Council may, for the purpose of making inquiry into the circumstances respecting the misbehaviour, inability, or incapacity of such judge, issue a commission to one or more judges of the supreme court of Canada, or to

any one or more judges of any superior court in any Province of Canada, empowering him or them to make such enquiry and to report,—and may, by such commission, confer upon the person or persons appointed full power to summon before him or them any person or witnesses, and to require them to give evidence on oath, orally or in writing, or on solemn affirmation, if they are persons entitled to affirm in civil matters, and to produce such documents and things as the commissioner or commissioners deem requisite to the full investigation of the matters into which they are appointed to inquire :

(5) The commissioner or commissioners shall have the same power to enforce the attendance of such person or witness, and to compel him to give evidence, as is, in civil cases vested in any superior court of the Province in which the enquiry is being conducted; but no such person or witness shall be compelled to answer any question, by his answer to which he would render himself liable to a criminal prosecution :

(6) This section shall apply to judges now holding office, as well as to those hereafter appointed, and a judge now holding office may be removed under this section for misbehaviour, incapacity, or inability, occurring or existing before the passing of this Act. 45 V. c. 12, ss. 2, 3, 4 and 5.

By section 11 of the above Act the salaries of county court judges in Ontario are as follows :—

The judge of the county court of the county of York, \$2,400 per annum ;

The judges of other county courts, each \$2,000 per annum, during the first three years of service, and after three years of service as such judge, each \$2,400 per annum ;

Junior judges of county courts, each \$2,000 per annum ;

The salary of any judge now receiving a greater salary than the maximum herein allowed, shall, during his incumbency, remain at its present rate.

Section 13 gives each judge an additional allowance of \$200 per annum for travelling expenses.

3. The person appointed to be the judge or junior judge of a county court shall be a barrister of at least five years standing at the bar of Ontario. C. S. U. C. 15, s. 2; 49 V. c. 16, s. 2.

Sections 96 and 97 of the B. N. A. Act are as follows :—

96. The Governor-General shall appoint the judges of the superior, district, and county courts in each Province, except those of the courts of Probate in Nova Scotia and New Brunswick.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and the procedure of the courts in those Provinces, are made uniform, the judges of the courts of those Provinces appointed by the Governor-General shall be selected from the respective bars of those Provinces.

As to appointment of district judges in provisional judicial districts, see R. S. O. c. 91, ss. 52 and 54, *infra*.

4. (1) In case more than one county court Judge is appointed for any county, then, unless otherwise expressed in the commission, the judge whose commission has priority of date shall be styled "the judge of the county court of " (as the case may be), and the other judge of the same court shall be styled "the junior judge" thereof.

(2) No junior judge shall be appointed in or for any county or union of counties, unless the population of the county or union of counties exceeds forty thousand, as appears by the official census then last taken. R. S. O. 1877, c. 42, s. 3.

See 54 V. c. 15, as to provision for appointment of a second junior judge in the County of York.

A junior judge of a county court is "a judge of a county court" within the meaning of the Extradition Act: *re* Parker, 19 O. R. 512; *re* Garbutt, 21 O. R. 179.

5. Every county court judge shall reside within the county or union of counties of which his commission designates him as judge; and there shall continue to be a resident judge in each county or or union of counties, now having a county judge. R. S. O. 1877, c. 42, s. 4.

6. No judge shall, during the continuance of his appointment, directly or indirectly practice in the profession of the law as counsel, solicitor, notary public or conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any court in this Province, under the penalty of forfeiture of office and the further penalty of \$400 to be recovered by any person who sues for the same in the high court, and one-half of the pecuniary penalty shall belong to the party suing, and the other half to Her Majesty. R. S. O. 1877. c. 42, s. 5.

In an action brought for the penalty under this section, the declaration alleged that defendant, being a judge, did in certain proceedings in the surrogate court prepare certain papers and documents to be used in said court, to wit, the petition of one G., etc. Defendant pleaded that he did not practice in the profession of the law as an attorney for said G., or as such attorney prepare any papers or documents to be used in said surrogate court. The evidence showed that defendant prepared gratuitously for G., who was a widow in poor circumstances, the petition, bond and affidavits to enable her to obtain administration to her late husband;—Held, that the plea was proved, and a verdict was, therefore, entered for defendant on the leave reserved. Per Draper, C.J. of Appeal, and Morrison, J., the evidence did not bring defendant within the spirit of the Act, or the mischief against which it was directed, which was the doing the acts prohibited for profit. *Allen q. t. v. Jarvis*, 32 Q. B. 56.

DEPUTY JUDGES.

7. (1) A barrister of at least three years' standing at the bar of Ontario may be appointed to be deputy judge for any county.

(2) The appointment may be made notwithstanding that the office of judge is vacant by death, or resignation, or that the judge is ill or absent at the time of the appointment of such deputy judge. R. S. O. 1877, c. 42, s. 6.

8. Every deputy judge shall hold office during pleasure, and in case of the death, illness, or absence of the judge, shall have authority to perform in the place of the judge, in the county for which he is deputy, all the duties of and incident to the office of judge of the county court and division courts, and all acts required or allowed to be done by the judge of the county court under this or any other statute. R. S. O. 1877, c. 42, s. 7.

9. No deputy judge shall be disabled from practising the profession of the law while holding his appointment. R. S. O. 1877, c. 42, s. 8.

See 53 V. c. 25, as to deputy and junior judges in provisional judicial districts.

It was held, that a commission appointing a deputy judge during pleasure and the absence of the county judge, was validly issued under R. S. O. c. 42, and that it was not essential to enable the deputy judge to act that the county judge should be absent from the county: *Regina v. Fee*, 3 O. R. 107.

OATH OF JUDGES.

10. No county court judge or deputy judge, shall enter upon the duties of his office until he has taken the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say :

" I, _____, do swear that I will (*in the case of a deputy judge add the words as occasion may require,*) truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of judge of the county court of the county of _____ (*or united counties of _____, as the case may be*), and of the several division courts within the same, without fear, favour or malice : So help me God."

R. S. O. 1877, c. 42, s. 9.

DUTIES AND POWERS OF JUDGES.

See, in addition to the following provisions, "The County Courts Act," R. S. O. c. 47, *infra*, as to duties and powers of judges.

11. Every county court judge, not including a deputy judge, shall be *ex officio* a justice of the peace for every county and part of Ontario, and may act in the office of justice of the peace in any part of the Province; and no property or other qualification shall be required in the case of a county court judge. R. S. O. 1877, c. 42, s. 10.

Chapter 153, R. S. C., "An Act respecting prize fighting," contains the following provision :—

10. Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada shall, within

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the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice of the peace with respect to offences against this Act. 44 V. c. 80, s. 10, *part*.

Section 157 of the Judicature Act confers the following additional powers on county judges:—

157. The judges of the several county courts shall be judges of the High Court for the purposes of their jurisdiction in actions in the high court; and in the exercise of such jurisdiction may be styled "local judges of the high court," and shall, in all causes and actions in the high court, have, subject to rules of court, power and authority to do and perform all such acts, and transact all such business in respect to matters and causes in and before the high court as they are by statute or rules of court in that behalf from time to time empowered to do and perform. 44 V. c. 5, s. 76.

The following sub-section was added by 52 V. c. 11, s. 1:—

(2) A local judge of the high court may, in cases of emergency, grant an interlocutory injunction under sub-section 8 of section 53 of this Act, in any action in the high court brought in his county, on proof, to the satisfaction of the judge, that the delay required for an application to the high court is likely to involve a failure of justice; such injunction to remain in force for a period not exceeding eight days as such local judge may direct, unless continued by the high court. Such injunction shall be by order to be signed, sealed, and issued by the deputy-registrar or deputy-clerk of the Crown of such county, upon the direction or fiat of such local judge, and such injunction shall have the same force and effect and may be continued, varied, dissolved and otherwise dealt with by the high court as if it had been originally granted by judgment or order of the high court.

Con. Rule 41, as originally passed, provided as follows:—

41. The judge of every county court other than the county court of York, shall in all actions brought in their county have concurrent jurisdiction with and the same power and authority

as the master in chambers in all proceedings now determined in chambers at Toronto, except that the authority of such judge shall not extend to [proceedings in the nature of a *quo warranto* under the Municipal Act, or to] the payment of money out of court, or dispensing with payment of money into court, in any action or matter, or to appeals from the taxing officers in Toronto pending taxation, or to making an order for the sale of infants' estate. 48 V. c. 13, s. 21. J. A. Rule 584.

The words in brackets were, however, in effect, repealed by 52 V. c. 36, s. 46, which is as follows :—

46. (1) A judge of the county court shall have the same jurisdiction as a judge of the high court to try the right of a municipality in the county of such county court judge to a reeve or deputy reeve or reeves, or the validity of the election or appointment of mayor, warden, reeve, deputy reeve, alderman, or councillor in the said county; and the practice with respect to such trial, and to the proceedings incident thereto, shall be the same, as nearly as may be, as in the high court for the time being.

(2) The judgment of a county court judge under this section shall be appealable to a judge of the high court, and the proceedings incident thereto shall be the same, as nearly as may be, as in the case of an appeal in other cases from the judgment of a local master or the master in chambers. The judgment of a judge of the high court on such an appeal shall be final.

The jurisdiction of the Master in Chambers is prescribed by Con. Rule 30, as follows :—

30. The master in chambers, in regard to all actions and matters in the high court, including proceedings in the nature of a *quo warranto* under the Municipal Act, shall be and hereby is empowered and required to do all such things, transact all such business, and exercise all such authority and jurisdiction in respect to the same as by virtue of any statute or custom, or by the rules of practice of the superior courts, or any of them, respectively, were at the time of the passing of the Acts

33 V. (O.) c. 11, 37 V. (O.) c. 7 and the Ontario Judicature Act, 1881—or are now done, transacted, or exercised by any judge of the said courts sitting at chambers, save and except in respect to the matters following:—

1. All matters relating to criminal proceedings, or the liberty of the subject ;
2. Appeals and applications in the nature of appeals ;
3. Proceedings as to lunatics under the Revised Statutes of Ontario, chapter 54, sections 5, 6, 7, 8, 9, 17 and 18, and chapter 44, section 140 ;
4. Applications to arrest ;
5. Petitions for advice under the Revised Statutes, chapter 110, section 37 ;
6. Applications as to the custody of infants under the Revised Statutes, chapter 137, section 1 ;
7. Applications as to leases and sales of settled estates ; to enable minors, with the approbation of the court, to make binding settlements of their real and personal estate on marriage ; and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees, or guardians, or otherwise, concur therein ;
8. Opposed applications for administration orders ;
9. Opposed applications respecting the guardianship of the person and property of infants ;
10. Applications for prohibition, mandamus or injunction.
11. Proceedings as to partition and sale of real estate, under the Revised Statutes, chapter 104.
12. Applications for leave to appeal after the time limited for that purpose has elapsed.
13. Appeals from judges of the county courts or local masters, or in respect of any other matter which by

these rules is expressly required to be done by a judge of the high court.

14. The payment of money out of court, or dispensing with payment of money into court, in administration and partition matters,

and except (unless by consent of the parties) in respect of the following proceedings and matters, that is to say:—

The removal of causes from inferior courts, other than the removal of judgments for the purpose of having execution.

The referring of causes.

Reviewing taxation of costs, except as provided in Rule 854.

Staying proceedings after verdict or judgment.

In Reg. *ex rel.* McGuire v. Birkett, 21 O. R. 162, it was held, following the principle of the decision of *re* Wilson v. McGuire, 2 O. R. 118, *infra*, that the Provincial Legislature had power to invest the Master in Chambers with authority to try controverted municipal election cases.

Section 125 of the Judicature Act is as follows:—

125. (1) There shall be a local master in every county or union of counties other than the county of York, and every local master hereafter appointed shall reside in the county for which he is appointed.

(2) When a vacancy occurs in the office of local master, the judge of the county court for the county shall be local master until and unless another person is appointed local master. In such case if there are two county judges, a senior and junior judge, both judges shall be local masters until and unless one of them or some other person is appointed sole local master. 44 V. c. 5, s. 64 (1, 2).

(3) Except in the county of York, the several clerks of the county courts shall be *ex officio* deputy clerks of the crown and pleas of the high court for their county. R. S. O. 1877, c. 39, s. 37.

(4) Where a county court judge is a local master, the county court clerk shall be the deputy registrar. 44 V. c. 5, s. 64 (3).

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Section 6 of the Surrogate Courts Act is as follows :—

6. The senior judge of the county court in every county shall be *ex officio* judge of the surrogate court for the county; and in case of the illness or absence or at the request of a judge of a surrogate court, or in case the office of senior judge is vacant, the junior or acting judge or the deputy judge (if any) of the county court, shall have all powers and privileges and perform all the duties of the judge of the surrogate court. R. S. O. 1877, c. 46, s. 6.

Section 21 of the Division Courts Act is as follows :—

21. (1) The division courts shall be presided over by the county court judges or junior or deputy judges in their respective counties.

(2) The junior judge for the county shall (subject to any other arrangement from time to time made with the senior judge or made by the judges of a county court district which includes such county) preside over the division courts of the county.

(3) The appointment of a junior judge shall not prevent or excuse the judge of the county court from presiding at any of the division courts within his county when the public interests require it. R. S. O. 1877, c. 47, s. 19.

See, however, sections 17 to 23 of this Act, *infra*, and *Re Wilson v. McGuire*, 2 O. R. 118 in note thereto.

By R. S. O. c. 66, s. 2, a judge of a county court may order a writ of attachment to issue in a high court case against the property of an absconding debtor. It was held in *Disher v. Disher*, 12 P. R. 518, that a county court judge has no power to set aside an order made by himself under this section. By R. S. O. c. 67, s. 1, a judge or acting judge of a county court may make an order in the nature of a *ca. re.* in a high court case; and by Con. Rule 1057 he may also set aside such order, or order that the defendant be discharged out of custody. By s. 9, however, a *ca. sa.* can be issued in the high court, only on the order of a judge of the high court, where the defendant had not been previously held to bail. It was held in *Waterhouse v. McVeigh*, 12 P. R. 676, following *Cochrane Manufacturing Company v. Lemon*, 11 P. R. 351, that a county court judge has not this power as a local judge of the high court. It was also held that a judge of the high court sitting in "single court" has power to set aside such an order.

By R. S. O. c. 48, s. 6 (*infra*), the county court judge is to preside as chairman of the general sessions of the peace for his county.

By s. 124 of the Judicature Act, the county court judge is *ex officio* an official referee.

ADDITIONAL DUTIES OF COUNTY JUDGES.

In addition to the duties and powers hereinbefore specifically mentioned, and those referred to in "The County Courts Act," R. S. O. c. 47, *infra*, certain duties are imposed on, and powers given to county court judges under the following Acts :—

DOMINION ACTS.

- The Electoral Franchise Act, R. S. C. c. 5.
- The Dominion Elections Act, R. S. C. c. 8.
- The Speedy Trials Act, 52 V. c. 47.
- The Seaman's Act, R. S. C. c. 74.
- The Pilotage Act, R. S. C. c. 80.
- The Wreckage and Salvage Act, R. S. C. c. 81.
- The Extradition Act, R. S. C. c. 142.
- The Summary Convictions Act, R. S. C. c. 178, as amended by 51 V. c. 45 and 53 V. c. 37.

ONTARIO ACTS.

- The Voters' Lists Act, 52 V. c. 3.
- The Ontario Elections Act, R. S. O. c. 9.
- The Drainage Act, R. S. O. c. 36.
- The Jurors' Act, R. S. O. c. 52.
- The Arbitration Act, R. S. O. c. 53.
- The Act respecting Commissioners, R. S. O. c. 62.
- The Creditors' Relief Act, R. S. O. c. 65.
- The Indigent Debtors Act, R. S. O. c. 68.
- The Summary Convictions Act, R. S. O. c. 75 (and see R. S. O. c. 92, s. 7, and 53 V. c. 56, s. 14).
- The Act respecting Constables, R. S. O. c. 82.
- The Act respecting Crim. Justice accounts, R. S. O. c. 84.
- The Partition Act, R. S. O. c. 104.
- The Registry Act, R. S. O. c. 114.
- The Land Titles Act, R. S. O. c. 116.
- The Act respecting Mill Dams, R. S. O. c. 118.
- The Rivers and Streams Act, R. S. O. c. 120.
- The Act respecting Assignments, R. S. O. c. 124.
- The Mechanics' Lien Act, R. S. O. c. 126.
- The Married Woman's Property Act, R. S. O. c. 132.
- The Dower Act, R. S. O. c. 133.
- The Act respecting Infants, R. S. O. c. 137.
- The Act respecting Apprentices, R. S. O. c. 142.
- The Overholding Tenants Act, R. S. O. c. 144.
- The Act respecting Notaries, R. S. O. c. 153.
- The Road Companies Act, R. S. O. c. 159.

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The Benevolent Societies Act, R. S. O. c. 172.

The Municipal Act, R. S. O. c. 184, (see also 52 V. c. 36, s. 46).

The Assessment Act, R. S. O. c. 193.

The Liquor License Act, R. S. O. c. 194, as amended by 53 V. c. 56, s. 14.

The Line Fences Act, R. S. O. c. 219.

The Ditches and Watercourses Act, R. S. O. c. 220, (see also 53 V. c. 67).

The Act respecting Neglected Children, 51 V. c. 40.

The Act respecting Flooding Lands, 52 V. c. 16.

The Public Schools Act, 54 V. c. 55.

Under several of these statutes an appeal lies from the decision of the county judge to the court of appeal: see R. S. O. c. 44, s. 44; see also R. S. O. c. 47, s. 42, *infra*, as to appeals.

12. Where any power or authority is, by this Act or by any statute now in force or which may hereafter be passed, conferred upon or is otherwise exercisable by the senior judge of a county court, whether with reference to the holding of any of the courts of the county which the said judge may hold, or to the business of any of the said courts, or to any other matter or thing over which the said judge has jurisdiction, either by virtue of any statute or otherwise howsoever, the like power and authority shall be possessed by, and may be executed by the junior judge, subject, however, to the general regulation and supervision of the senior judge. R. S. O. 1877, c. 42, s. 11.

See *re Parker*, 19 O. R. 512 : *re Garbutt*, 21 O. R. 179, *supra*, note to s. 4.

13. At any sittings of the county court at the same time as the sittings of the court of general sessions of the peace, or of a division court in any county, or of any two of the said courts at the same time, either the senior or junior judge or both of them, may, if the senior judge thinks fit, preside in any of the said courts, or each of them

in one of said courts at the same time, so that two of the said courts may sit and the business therein be proceeded with simultaneously. R. S. O. 1877, c. 42, s. 12.

14. It shall be the duty of a county court judge to hold any of the courts in any county other than his own, or to perform any other duty of a county court judge in any county, upon being required so to do by an order of the Governor-General made at the request of the Lieutenant-Governor; or, without any such order, the judge in any county may, if he sees fit, perform any judicial duties in any county other than his own on being requested to do so by the judge to whom the duty for any reason belongs. R. S. O. 1877, c. 42, s. 13.

15. Any retired county court judge may hold any court or perform any other duty of a county court judge in any county, on being requested to do so by the judge to whom the duty for any reason belongs, or upon being authorized so to do by an order of the Governor-General, made at the request of the Lieutenant-Governor. R. S. O. 1877, c. 42, s. 14.

16. In the cases mentioned in the next preceding two sections, the judge, acting in compliance with such direction or request, shall have jurisdiction to hold all or any of the courts of the county in which he so acts, and to do or adjudicate upon all matters or things in such county and whether

relating to the business of any of the said courts or to any other matter or thing over which the judge of the county court of the county has jurisdiction, either by virtue of any statute or otherwise howsoever; and no act of such judge in any county shall be open to question in any legal proceeding on the alleged ground that he was not the proper judge to perform the duty, or that the same had not been regularly or otherwise assigned to him, or had not been performed at such request, or by such direction, as the law requires. R. S. O. 1877, c. 42, s. 15.

It was held in Nova Scotia, under a similar statute, that a county judge sitting in Cape Breton County, had no jurisdiction to try a municipal election petition to set aside the election of a councillor for Richmond County: *Catherine v. Morrison*, 21 N. S. R. 291.

Similarly, in New Brunswick, where the county judge of St. John was called in by the county judge of Albert to try a case under the County Court Act, and, while sitting in chambers in St. John, issued a summons for a new trial, but afterwards discharged it on the ground that he had no power to act in St. John, it was held that the first summons was a nullity, and that he had power to issue a new summons in Albert: *Steeves v. Lucas*, 15 N. B. R. 70.

COUNTY COURT DISTRICTS.

17. (1) Any part or parts of the Province may, for the purposes of this Act, be divided into districts, or groups of counties, by proclamation of the Lieutenant-Governor at such time or times as he may deem expedient; and such division shall take effect, and the districts thereby formed be erected and established, on such day after the first publication of the proclamation in the *Ontario Gazette* as the proclamation may name.

(2) The districts so erected may from time to time, be dissolved, re-established, altered or re-arranged by the Lieutenant-Governor by like proclamation; and the time when the dissolution alteration or re-arrangement is to take effect may be named, proclaimed and published in the *Ontario Gazette* in like manner. R. S. O. 1877, c. 42, s. 16.

18. After the erection of a district for the purposes of this Act, the several county courts, courts of general sessions, division courts, courts of appeal under the Assessment Act, courts for the revision of voters' lists and all other courts which a county judge may hold in each county shall be held by the judges (including therein the junior judges) in the district, in rotation, as far as may in each district be just, convenient and practicable, in view of the respective ages, length of service, and strength of the several judges and the special duties assigned to junior judges, as well as in view of the other offices, (if any) held by any of the judges, and all other circumstances. R. S. O. 1877, c. 42, s. 17.

An order for the committal of a defendant was made by the judge of the county court of the County of Lambton, sitting in a division court in the County of Middlesex under the provisions of the above sections. A motion for prohibition was made on the ground that that enactment was *ultra vires*. Held, Armour, J., dissenting, that the Provincial Legislature has complete jurisdiction over the division courts, including the appointment of officers to preside over them; that the learned judge acted in the Middlesex division court as one of the persons designated by the Legislature to preside over it, and having regard to the enactment in question, solely in its bearing on division courts, it was not *ultra vires*. *In re Wilson v. McGuire*, 2 O. R. 118.

In a subsequent case an application was made for a prohibition to restrain proceedings to enforce an order of the sessions of the county of Renfrew, which

were presided over by the county judge of Lanark under the provisions these sections, quashing a conviction with costs. Held, per Armour an O'Connor, J.J., that the county judge of the county of Lanark had no power to preside at the sessions in the county of Renfrew, the above sections authorizing him to do so being *ultra vires*. Wilson, C.J., upon this point gave no positive opinion, but inclined to the opposite view: Gibson v. McDonald, 7 O. R. 401.

In consequence of the latter decision, the judges in "grouped" counties have ceased to hold courts in other than their own counties, except in Middlesex and Lambton, where the division courts are still held by the judges of both counties in rotation. See note to R. S. O. c. 47, s. 13, *infra*.

It has been held in Nova Scotia that the territorial jurisdiction of county court judges does not depend upon their commissions, which are only descriptive of the tribunal over which such judges are appointed to preside, but upon the enactments of the Provincial Legislature, which may define, enlarge, and extend the districts within which the judges sit, as it sees fit: Crowe v. McCurdy, 18 N. S. R. 301.

In a more recent case in New Brunswick, it was held (per Weldon, Fisher, and Wetmore, J.J., Allen, C.J., and Duff, J., dissenting), that section 1 of the Act 39 V. c. 5, intitled "An Act to establish Parish Courts," which section provides that the commissioners shall be appointed by the Lieutenant-Governor in Council, is not *ultra vires* of the Local Legislature: Ganong v. Bayley, 17 N. B. R. 324.

See also judgment of McMahon, J., in Reg. *ex rel.* McGuire v. Birkett, 21 O. R. 162, as to the power of the Provincial Legislature to authorize the master in chambers to try controverted municipal election cases; and his remarks at page 172 on the report of the Minister of Justice, advising the disallowance of the Act of the Legislature of Quebec, which created district courts for the district of Montreal, and authorized the appointment of magistrates therefor by the Lieutenant-Governor in Council.

The following five sections have also ceased to be acted upon, except in Middlesex and Lambton, since the decision of Gibson v. McDonald, *supra* :—

19. (1) The judges in any or each district so erected shall meet together at least once in every year; and the judges present, or a majority of them, shall arrange and appoint which of the said courts in the district shall be held by each of the judges in the district throughout the ensuing year, and what other judicial work each shall discharge in the respective counties of the district throughout the year.

(2) The judges may also (subject to the approval of the Lieutenant-Governor in Council, to be notified in the *Ontario Gazette*) fix and appoint the times in the months of June and December respectively in every year, for the holding of the county courts and general sessions of the peace in every county of such district, and the courts shall be held on the days so appointed. R. S. O. 1877, c. 42, s. 18.

20. (1) The first meeting shall take place at such place and time as may be named for that purpose in the proclamation erecting and establishing a district of counties, or at the place and on the day the judges of the district may agree upon in case the same are not named in the proclamation; and the meeting may be continued from day to day at the discretion of the judges present.

(2) The subsequent annual meetings shall be at such one of the county towns of the district, and at such place therein, and at such time as the judges of the district may unanimously agree upon, or as a majority present at the annual meeting may appoint, or as the Lieutenant-Governor may by Order in Council direct. R. S. O. 1877, c. 42, s. 19.

21. It shall be the duty of every judge to whom any duty is assigned at such meeting to perform the duty so assigned to him; and if he is, by reason of illness or other cause, unable to

perform the same it shall be his duty to do what is necessary if he can, to have the duty performed by another person competent by law in that behalf. R. S. O. 1877, c. 42, s. 20.

22. In case no provision is made at such meeting for some duty belonging to the county court judges, or in case the provision made in that behalf proves abortive, it shall be the duty of the judges of the district to see that the deficiency is supplied by some other person competent by law in that behalf, and to forthwith communicate what they do therein to the Provincial Secretary. R. S. O. 1877, c. 42, s. 21.

23. The judge of any county forming part of a district may if he sees occasion, perform in any part of the district any judicial acts affecting the courts or business of the county of which his commission designates him as judge, and being within the legislative authority of this Province. R. S. O. c. 42, s. 22.

INTERPRETERS.

24. In case the municipal council of any county pass a resolution requesting or approving of the appointment of an official interpreter to act at the courts held in that county, an appointment may be made accordingly in the same manner, and subject to the same terms and conditions, as provided in regard to shorthand writers by the next section and the said section shall apply as

nearly as may be to the official interpreters. 48
V. c. 13, s. 26.

SHORTHAND WRITERS.

25. (1) In case the municipal council of any county or the municipal councils of any county and a city or town united with the county for judicial purposes and not within the jurisdiction of the county council, pass a resolution or resolutions, as the case may be, requesting or approving of the appointment of a shorthand writer to and for the local courts of the county, the Lieutenant-Governor may from time to time appoint a person to fill the office of shorthand writer for the said courts, and such person shall be subject to the direction of the senior judge, or, in his absence, to the direction of the junior judge, and shall be entitled to such remuneration, either by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may from time to time direct ; and if paid by salary only, the fees payable in respect of his duties as a shorthand writer shall go in reduction of his salary, and the balance, if any, shall be paid by the county quarterly, on the first day of January, April, July and October of every year.

(2) The fees, and all matters relating to the duties of the said officer shall be determined and regulated from time to time by the judges of the

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said county court, subject to the approval of the Lieutenant-Governor in Council.

(3) The city or town aforesaid, shall bear and recompense the county for a proper proportion of the salary, and the proportion, in case the city or town and county disagree, shall be determined by arbitration, according to the provisions of the Municipal Act; and, subject to such agreement or arbitration, and until and unless the same determines a different proportion, the city or town shall pay to the county one-half, and the county's share shall be one-half of said salary.

(4) This section shall not apply to the County of York. R. S. O. 1877, c. 42, s. 23.

26. (1) The Lieutenant-Governor may from time to time appoint a person to fill the office of shorthand writer for the local courts of the County of York, and such person shall be subject to the direction of the senior judge, or, in his absence, to the direction of the junior judge, and shall be entitled to such remuneration, either by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may from time to time direct; and if paid by salary only, the fees payable in respect of his duties as a shorthand writer, shall go in reduction of his salary, and the balance, if any, shall be paid by the county quarterly, on the first day of January, April, July and October of every year.

(2) The fees, and all matters relating to the duties of said officer shall be determined and regulated from time to time by the judges of the said county court, subject to the approval of the Lieutenant-Governor in Council.

(3) The City of Toronto shall bear and recompense the County of York for a proper proportion of the salary, and the proportion, in case the city and council disagree, shall be determined by arbitration, according to the provisions of the Municipal Act; and, subject to such agreement or arbitration, and until and unless the same determines a different proportion, the city shall pay to the county one-half, and the county's share shall be one-half of the salary. R. S. O. 1877, c. 42, s. 24.

See 54 V. c. 15 as to provision for appointment of an additional junior judge in the County of York.

COUNTY COURTS ACT.

CHAPTER 47, REVISED STATUTES OF ONTARIO, 1887.

An Act respecting the County Courts.

SHORT TITLE, s. 1.	COSTS, s. 30.
STYLE OF THE COURTS, s. 2.	EXECUTION, ss. 31, 32.
JUDGES, s. 3.	POWER TO ENFORCE RULES, s. 33.
CLERKS, ss. 4-10.	ACCOUNTS AND INQUIRIES, ss. 34-37.
SPECIAL EXAMINERS OF HIGH COURT TO BE OFFICERS OF COUNTY COURTS, s. 11.	TRANSFERS, s. 38.
SITTINGS, ss. 12-17.	COSTS OF TRANSFER OR REFER- ENCE, s. 39.
JURISDICTION, ss. 18-22.	APPEALS, ss. 40-52.
REMOVAL OF ACTIONS BY <i>cer-</i> <i>tiorari</i> , ss. 23-25.	RULES OF LAW, s. 53.
PLEADING AND PRACTICE, ss. 26-29.	RULES OF COURT, s. 54.
	TARIFF OF COSTS, s. 55.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The County Courts Act.*" R. S. O. 1877, c. 43, s. 1.

2. There shall be in every county or union of counties a court of record, to be styled the county court of the county of _____ (or united counties of _____ as the case may be); and the county courts already established under such names respectively, and all existing commissions, judges and officers of such county courts shall continue subject to the provisions of this Act. R. S. O. 1877, c. 43, s. 2.

These courts were established in Upper Canada, under the name of "district courts" by 8 V. c. 13, which consolidated previous statutes from 2 Geo. IV to 4 & 5 V. They have since undergone numerous changes, both in jurisdiction and procedure, and they now occupy an intermediate position between the high court and the division courts. They were given a limited equity jurisdiction by 16 V. c. 119, but this was subsequently taken away by "The Law Reform Act" 32 V. c. 6, s. 4. In England the existing county courts were established by 9 & 10 V. c. 95; and the statutes relating thereto were consolidated by 51-52 V. c. 43. The English county courts possess nearly the same jurisdiction as our county and division courts combined, and the pleading, procedure, and practice are somewhat similar to those of our division courts, with a sliding scale of costs, according to the amount of the claim. The Manitoba county courts (see 50 V. c. 19), are very similar to the English in all these respects. In Nova Scotia (see 52 V. c. 9), the pleading and practice of the county courts are similar to those of the supreme court, with which they have concurrent jurisdiction up to \$400, and exclusive jurisdiction in actions of debt below \$80, and not less than \$20. Claims up to \$20 are within the civil jurisdiction of justices of the peace. There is also a sliding scale of costs in the county court, according to the amount of the claim. The New Brunswick County Courts Act resembles that of Nova Scotia; and the civil jurisdiction of justices of the peace is also similar to that in Nova Scotia.

JUDGES.

3. The county court in every county shall be presided over by the judge or junior or acting judge or deputy judge as provided by "The Local Courts Act," R. S. O. 1877, c. 43, s. 3.

See R. S. O. c. 46, ss. 2 to 9, *supra*, and notes thereto.

See also 54 V. c. 15, as to provision for a second junior judge in the County of York.

CLERKS.

4. The Lieutenant-Governor shall from time to time appoint, under the great seal, a clerk to every county court, to hold office during pleasure. R. S. O. 1877, c. 43, s. 4.

5. Every clerk of a county court shall give security for the due performance of his office, in such sum and with so many sureties, and in such manner and form as the Lieutenant-Governor directs. R. S. O. 1877, c. 43, s. 5.

6. (1) The clerk of every county court shall keep his office in the court house, or if there be no room therein, then in such place within the county town, as the judge directs. R. S. O. 1877, c. 43, s. 6.

(2) Provided, however, that the clerk of the county court of the County of Essex, may keep an office in some convenient place in the town of Windsor, in the County of Essex, subject to such arrangements as the county council of the County of Essex may assent to, and subject also to the approval thereof by the Lieutenant-Governor in council. 49 V. c. 13, s. 1.

Con. Rule 1261 is as follows :—

1261. Every county court clerk shall keep his office open for the transaction of business on every day except on holidays, and except as hereinafter provided from the hour of 10 in the forenoon, to the hour of 3 in the afternoon. On and between the 1st day of July and the 31st day of August, and on and between

the 24th day of December and the 6th day of January, every such clerk shall keep his office open for the transaction of business, from 10 in the forenoon until noon; and during the statutory sittings of the court, such clerk shall keep his office open as aforesaid, on and between the said dates until 4 in the afternoon. J. A. Rule 584.

A clerk of the county court, being also *ex officio* deputy clerk of the crown and clerk of assizes, is privileged from arrest only while engaged in his official duties, or while going to and returning from his office, and this court therefore discharged a rule to prohibit the county court judge from issuing an order of commitment against such officer. *In re Mackay v. Goodson*, 27 Q. B. 263.

7. The clerk of every county court shall from time to time as often as required so to do by the county crown attorney of his county, and at least once in every three months, deliver to him, verified by the affidavit of such clerk, sworn before the judge or a justice of the peace of the county, a full account in writing of all fines levied by the Court. R. S. O. 1877, c. 43, s. 8.

In addition to the above, the following duties are imposed by R. S. O. c. 15, s. 29:—

29. Every clerk of a county court and every registrar of a surrogate court and every clerk of a division court for a division embracing a city or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, shewing the sums received by him for fees, charges and emoluments of all kinds whatsoever, and shall on the 15th day of January in each year make up to and including the 31st day of December of the previous year a return to the Lieutenant-Governor, under oath of such fees, charges and emoluments so received by him during the said year. 41 V. c. 2 s. 84.

53 V. c. 12, s. 7, provides for the following additional returns by county court clerks:—

7. (1) Every clerk with whom instruments are required to be registered under the provisions of the "Act respecting Mort-

gages and Sales of Personal Property," shall on or before the 15th day of January in each year, transmit to the Minister of Agriculture returns which shall set out.

(a) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in the office of such clerk on the 1st day of January, in the year preceding that in which the return is made.

(b) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered in such office during the year following said 1st day of January, and

(c) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in said office on the 31st day of December in said year.

(2) The returns shall not include instruments which have lapsed by reason of non-renewal.

(3) The chattel mortgages and renewals and discharges, and assignments for the benefit of creditors in the said returns shall be classified according to the several occupations or callings of the vendors or mortgagors or assignors as stated in the instruments, and shall show the aggregate sums purporting to be secured thereby respectively.

(4) The returns shall, where practicable distinguish mortgages to secure future indorsements or future advances from mortgages to secure an existing debt or present advance.

8. The clerks of the county courts shall tax costs, subject, in the event of a dispute arising at taxation, to an appeal to the judges of the county courts respectively. R. S. O. 1887, c. 43, s. 9.

The following Rules provide for the issue of writs in county courts :—

1253. All writs issued in the county courts shall be issued by the clerk and shall be under the seal thereof, and shall be tested

in the name of the judge thereof; or in the case of the death of such judge, then in the name of the junior or acting judge in the county court for the time being. R. S. O. 1877, c. 50, ss. 6, 8.

1254. The several county courts may issue writs of *subpena ad testificandum*, to enforce the attendance of any witnesses resident within Ontario and also writs of *subpena duces tecum*, to enforce the attendance of and the production of deeds and papers by any such witnesses and may proceed against persons who, having been duly served with a *subpena*, disregard or disobey the same, with the same powers, in like manner and by the same mode of proceeding as belongs to and is practised in the high court. R. S. O. 1877, c. 62, s. 16.

Rule 1253 is partly a repetition of Rule 227 which is as follows :—

227. The clerks of the county courts shall issue all similar writs in the county courts respectively. R. S. O. 1877, c. 50, s. 6.

9. No clerk of a county court shall, for fee or reward draw or advise upon a chattel mortgage or other paper or document connected with the duties of his office and for which a fee is not expressly allowed by the tariff in that behalf. 44 V. c. 5, s. 65, *part*.

This section was passed for the purpose of placing county court clerks in the same position as registrars of deeds are, by section 19 of the Registry Act, with regard to documents filed in their offices.

10. In the event of the death, resignation or removal of a clerk of the county court the clerk of the peace for the county shall, *ex-officio*, be clerk of the county court until another person is appointed and assumes the duties of the office, and every clerk of the peace while clerk of the county court as aforesaid shall, except in the County of York, be also *ex-officio* deputy clerk of the Crown and

registrar of the surrogate court. The clerk of the peace shall add the words *pro tem.* when affixing his official designation as clerk of the county court, deputy clerk of the Crown or registrar of the surrogate court to his signature in any writs, rules, grants or orders, signed by him under the provisions of this section: Provided, however, that the preceding enactment as to the clerk of the peace being *ex-officio* registrar of the surrogate court, shall not apply to any case where at the time of the death, resignation or removal of the clerk of the county court, he did not hold the office of registrar of the surrogate court. 42 V. c. 15, s. 5.

SPECIAL EXAMINERS.

11. All special examiners of the high court heretofore or hereafter appointed, shall be officers of the several county courts of the Province and shall possess like powers in county court cases, as those now possessed and exercised by them in cases in the high court. 49 V. c. 16, s. 9.

The following are the provisions of the Judicature Act respecting the appointment of special examiners:—

147. The supreme court may, from time to time, under the seal of the court, appoint and at discretion remove special examiners for the purpose of taking evidence of parties and witnesses, and the examiners so appointed shall have all the powers formerly possessed by masters extraordinary and examiners. R. S. O. 1877, c. 40, s. 11.

148. Any officer of the supreme court or the high court shall, for the purposes of any proceedings directed by the court to be

taken before him, have full power to administer oaths, to take affidavits, to receive affirmations, and to examine parties and witnesses as the court may direct. R. S. O. 1877, c. 40, s. 10.

SITTINGS.

12. (1) In lieu of terms, the several county courts shall in each year hold four quarterly sittings, which (except in the County of York), shall commence respectively on the second Monday in the month of January and the first Monday in the months of April, July and October in each year, and end on the Saturday of the same week, unless extended by order of the judge.

(2) The said quarterly sittings of the county court of the County of York shall commence on the second Monday in January, June and October, and the first Monday in April in each year; and shall end on the Saturday of the same week, unless extended by order of the judge.

(3) It shall not be necessary for the sheriff or his officers to attend the said quarterly sittings of the county court. 50 V. c. 8, Sched.

A county court judge cannot by arrangement with the bar of his county transact term business in vacation, and an appeal from a decision under such an arrangement was allowed with costs. *Smith v. Rooney*, 12 Q. B. 661.

A rule to enter a nonsuit having been granted in the county court in April term, was only enlarged until the following term. The judge died before that term began, and no successor was appointed till after its expiration, but the clerk of the court granted a rule to enlarge it. It was argued in October term before the new judge, who treated it as still pending, and gave judgment. Held, that he was right. *Leslie v. Emmons*, 25 Q. B. 243.

13. (1) Except in the County of York, and subject to the provisions of section 19 of the "Local

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Courts Act," sittings of the said county courts, for the trial of issues of fact and assessment of damages, shall be held semi-annually, to commence on the second Tuesday in the months of June and December in each year.

(2) The county court of the County of York shall hold four such sittings in each year, to commence respectively on the first Tuesday in the months of December and March, and on the second Tuesday in the months of May and September in each year. R. S. O. 1877, c. 43, s. 13.

In some counties in which different dates had been fixed under section 19 of the "Local Courts Act," for holding these courts, the courts are still held on those days instead of the days named in this section, though the judges have ceased to hold county courts or sessions in other than their own counties, in consequence of the decision in *Gibson v. McDonald*, 74 O. R. 401, *supra*, note to c. 46, s. 17. In the county of Middlesex, the county courts with jury, and sessions are held on the first Monday in June and December, and in the county of Renfrew, on the first Tuesday in these months.

14. Except in the County of York there shall be sittings of the several courts of this Province on the first Tuesday in the months of April and October in each year, whereat all issues of fact in any civil action brought or pending in the court wherein the sittings may be, and every assessment and inquiry of damages in such action may be heard, tried and assessed by the judge of such court without the intervention of a jury, in those cases where no jury is required. R. S. O. 1877, c. 43, s. 14; 44 V. c. 5, Rule 487.

Prior to the "Judicature Act," these sittings were held on Monday instead of Tuesday.

15. In addition to the regular sittings of the several county courts, the judge of every county court may, at such times as he appoints for the purpose, hold additional sittings of such courts for the trial of issues of fact to be tried in such court by a judge without a jury; and he shall hold such sittings as often as may be requisite for the due despatch of business. R. S. O. 1877, c. 43, s. 15.

Con. Rule 1255 is as follows :—

1255. Subject to rules of court, the judges of the county court shall have power to sit and act at any time for the transaction of any part of the business of such courts, or for the discharge of any duty which by any statute or otherwise was formerly required to be discharged out of or during term. J. A. Rule 488.

16. While sittings of the county court of any county which has a senior and junior judge, are being held for the trial of issues of fact and assessment of damages, the judges of the said court, or any two persons authorised to hold the sittings of such court, may, in case the general sessions of the peace have been adjourned or have terminated, sit separately, one for the trial of causes where a jury is required, and the other for the trial of causes to be tried without a jury. R. S. O. 1877, c. 43, s. 16.

See 54 V. c. 15, as to concurrent sittings of county court, general sessions and division courts in County of York.

17. (1) Where, from illness or from other casualty, the judge who is to hold the sittings of the county court is unable to hold the same at the time appointed therefor, the sheriff of the county, or in

his absence his deputy, may adjourn by his proclamation the said court to any hour on the following day, to be by him named, and so from day to day until the judge is able to hold such court, or until he receives other directions from the judge or Provincial Secretary.

(2) The sheriff shall forthwith notify any adjournment to the Provincial Secretary, for the information of the Lieutenant-Governor. I O. 1877, c. 43, s. 17.

The following provisions are contained in the "Judicature Act" concerning the trial of high court cases in the county court, and county court cases in the high court :—

96. (1) All issues of fact and assessments of damages in the high court relating to debt, covenant and contract, where the amount is liquidated or ascertained by the signature of the defendant, may be tried and assessed in the county court of the county where the trial is to take place, if the plaintiff desires it, unless a judge of the high court otherwise orders, and upon such terms as he deems meet.

(2) In such case the action shall be entered for trial, notice of trial shall be given, and the trial take place in the same way as in ordinary cases in such county court.

(3) In any action in the high court, in which the amount of the demand is ascertained by the signature of the defendant, and in an action for any debt in which a judge of the said high court is satisfied that the case may safely be tried in a county court, any judge of the high court may order that such case shall be tried in the county court of the county where such action was commenced, and such action shall be tried there accordingly, and the record shall be made up as in other cases ; and the order directing the case to be tried in the county court shall be left with the clerk of the county court on entering the action for trial, annexed to the certified copy of the pleadings for the judge ;

and the trial shall take place in the same way as in ordinary cases in such county court. R. S. O. 1877, c. 49, s. 81.

97. (1) By the order of a judge of the high court, made upon such terms as the judge may consider just, the issues of fact and assessment of damages in any action pending in a county court may be tried and assessed at the sittings of the high court at any county town.

(2) In such cases the action shall be entered and the case tried as in ordinary cases. R. S. O. 1877, c. 49, s. 82.

98. Where any such cause is referred by the presiding judge at such sittings, the county court in which the action is brought, and the judge thereof, shall have the same power to enforce any award, report or certificate made on the reference, and to make rules and orders upon appeals therefrom and motions relating thereto, as if the order referring the case had been made by the county judge. R. S. O. 1877, c. 49, s. 40.

99. The clerk of the several county courts shall provide books in which the judges presiding at the sittings of the high court, where cases brought in any county court are tried or assessed under this Act, may enter their notes of such trials and assessments; and such books, immediately after the trials or assessments, shall be returned to the said clerks and shall remain in their offices. R. S. O. 1877, c. 49, s. 41.

100. The jury fees and the fees and charges payable and pertaining to officers of the county courts, upon all actions or proceedings brought in the county courts, and tried or assessed in the high court, shall be chargeable and paid as if the same were being tried or assessed in the county courts; and no other fees shall be chargeable thereon, and the clerk of a county court shall be entitled to receive and take such part thereof as pertains to him, to his own use. R. S. O. 1877, c. 49, s. 44.

The following Con. Rules are those applicable to such trials :—

690. In any of the cases in sections 96 & 97 of "The Judicature Act" the notice of trial or assessment of damages shall state that the cause will be tried, or the damages assessed at the

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sittings of the high court or county court, according to the fact. R. S. O. 1877, c. 49, s. 33.

691. Nothing herein contained shall prevent a judge of the court in which the action is brought, or, after the action is entered for trial or assessment, the judge before whom the trial or assessment is intended to be had, from entertaining applications to postpone the trial or assessment. R. S. O. 1877, c. 49, s. 34.

692. Where judgment is not reserved, and subject in that case to rules made, and subject in all cases to rules to be made, judgment in any of the said cases may be entered immediately, unless the judge who tried the cause certifies on the record, under his hand, that the case is one which, in his opinion, should stand to abide the result of a motion that may be made therein in the divisional court, or unless a judge of the high court otherwise orders. R. S. O. 1877, c. 49, s. 35.

693. Any motion to be made, in respect to the trial, judgment, verdict or assessment of damages in a high court case tried or assessed at the sittings of any county court, shall be made in the high court. R. S. O. 1877, c. 49, s. 36.

694. Any motion to be made in respect to the trial, judgment, verdict or assessment of damages in any county court case had, tried or assessed at any sittings of the high court, shall be made, heard and determined at the sitting of such divisional court of the high court, as the party moving or applying elects, and according to the practice of the high court; and any order made in such cause by such court shall be final, and shall not be subject to appeal to the court of appeal. R. S. O. 1877, c. 49, s. 37.

695. In any action in a county court entered for trial at any sittings of the high court, the judge presiding at the sittings shall have the same powers as to amendment of the pleadings and proceedings, putting off the trial, reference, making the cause a *remanet*, and otherwise dealing with the cause and proceedings therein, as if the action had been commenced in the high court. R. S. O. 1877, c. 49, s. 38.

696. Whenever the said judge endorses on the certified copy of pleading in any such action the word "*Remanet*," and adds any words to the effect following: "*And the within cause may be entered and tried at any county court, or sittings of the high court*," such cause may without payment of any further fee for entering the case be entered at any subsequent sittings of the county court, or sittings of the high court, for which notice of trial may be given, and the case may be tried and disposed of in the same way as any other case entered at such sittings. R. S. O. 1877, c. 49, s. 39.

697. On the application of any party, the county court clerk shall, at the cost of the party, forward to the Registrar at Toronto, of such division of the high court as the party designates, a certified copy of the judge's notes of the trial, or assessment, together with the record and the exhibits, to enable the high court properly to dispose of any application made, or to be made, in or respecting such cases. R. S. O. 1877, c. 49, s. 42.

1182. The costs on all proceedings where a high court case is tried in a county court, or a county court case in the high court, shall be the usual costs of such cases in the court in which the action was brought. R. S. O. 1877, c. 49, s. 48.

It was held, that in a case depending in one of the superior courts, and taken down for trial to the county court, under 23 V. c. 42, s. 4, the judge of the court below can order immediate execution. *Gildersleeve v. Hamilton*, 11 C. P. 298.

A verdict was entered for the plaintiff on the trial of an issue by the court of chancery, to be tried at the sittings of the county court of the County of Dufferin. The county court judge set aside the verdict and entered a nonsuit, on grounds embracing matters of law as well as of fact and evidence. Held, that he had no power to do so, and that the application should have been made to the court that directed the issue. *Barker v. Leeson*, 9 P. R. 107.

Held, that the judge of the county court has power to allow pleas to be added in cases sent down from the superior courts to be tried by him, as well as in actions commenced in his own court. *King v. Glassford*, 11 C. P. 490.

Where a county court case has been directed to be tried at the assizes, an application to set aside the notice of trial must be made to the county court. *Clark v. Clifford*, 7 P. R. 329.

Held, under the "Law Reform Act," 1863, s. 17, s-s. 4, 5, as amended by the 33 V. c. 71, O., that in a county court case tried at the assizes the motion to arrest judgment was properly made in this court. *Edmunds q.t. v. Hoey*, 35 Q. B. 495.

JURISDICTION.

18. Except in the cases of actions for the recovery of corporeal hereditaments mentioned in section 20 of this Act, or in other cases in which, by any other Act, jurisdiction is conferred upon county courts or a judge thereof, the said courts shall not have cognizance of any action :

1. In which the title of land is brought in question ; or,

2. In which the validity of any devise, bequest or limitation under any will or settlement is disputed ; or

3. For libel or slander ; or,

4. For criminal conversation or seduction ; or

5. Against a justice of the peace for anything done by him in the execution of his office, if he objects thereto. R. S. O. 1877, c. 43, s. 18.

As to exceptions to jurisdiction of district courts in provisional judicial districts, see R. S. O. c. 91, s. 58, *infra*.

R. S. O. c. 73, s. 16, is as follows :—

16. No action shall be brought in any county or division court against a justice of the peace for anything done by him in the execution of his office if the justice objects thereto ; and if, within six days after being served with a notice of the action, the justice, or his solicitor or agent, gives a written notice to the plaintiff in the intended action, that he objects to being sued in such county or division court for such cause of action, no proceeding shall afterwards be had in such county or division court in the action, but it shall not be necessary to give another notice of action in order to sue the justice in any other court. R. S. O. 1877, c. 73, s. 12.

The following are the provisions of R. S. O. c. 51, respecting the jurisdiction of the division courts :—

69. The division courts shall not have jurisdiction in any of the following cases :

1. Actions for any gambling debt ; or
 2. Actions for spirituous or malt liquors drunk in a tavern or alehouse ; or
 3. Actions on notes of hand given wholly or partly in consideration of a gambling debt or for such liquors ;
 4. Actions for the recovery of land, or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question ;
 5. Actions in which the validity of any devise, bequest or limitation under any will or settlement may be disputed ;
 6. Actions for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage ;
 7. Actions against a justice of the peace for anything done by him in the execution of his office, if he objects thereto.
- R. S. O. 1877, c. 47, s. 53.

70. (1) The division courts shall have jurisdiction in the following cases :

- (a) All personal actions where the amount claimed does not exceed \$60. R. S. O. 1877, c. 47, s. 54 (1) ; 48 V. c. 8, s. 3 ;
- (b) All claims and demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100. 41. V. c. 8, s. 6 :
- (c) All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed \$200, and the amount or original amount of the claim is ascertained by the signature of the defendant or of the person whom, as executor or administrator, the defendant represents. 48 V. c. 8, s. 2, *part*.

(2) In the class of cases provided for by paragraph (c) of the preceding sub-section, the increased jurisdiction thereby conferred shall apply to claims and proceedings against absconding debtors under section 249, and subsequent sections of this Act ; and in such cases the attachment may issue and proceedings may be had on a claim of not less than \$4 and not more than \$200. 48 V. c. 8, s. 4.

(8) Claims combining :

- (a) A cause or causes of actions in respect of which the jurisdiction of the division courts, is by the foregoing sub-sections of this section, limited to \$60, which causes of action are hereinafter designated as class (a) and
- (b) A cause or causes of action in respect of which the jurisdiction of the said courts is by the said sub-sections limited to \$100, which causes of action are hereinafter designated as class (b) ;
- (c) A cause or causes of action in respect of which the jurisdiction of the said courts is by the said sub-sections limited to \$200, which causes of action are hereinafter designated as class (c) ;

may be tried and disposed of in one action, and the said courts shall have jurisdiction so to try the same ; provided that the whole amount claimed in any such action in respect of class (a), shall not exceed \$60 ; and that the whole amount claimed in any action in respect of classes (a) and (b) combined, or in respect of class (b) where no claim is made in respect of class (a), shall not exceed \$100, and that the whole amount claimed in respect of classes (a) and (c) or (b) and (c) combined, shall not exceed \$200, and that in respect of classes (b) and (c) combined, the whole amount claimed in respect of class (b) shall not exceed \$100 ; 48 V. c. 15, s. 6.

72. The division courts shall also have jurisdiction in all actions of replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed

the sum of \$60, as provided in "The Replevin Act." R. S. O. 1877, c. 47, s. 56; 48 V. c. 8, s. 8.

The division courts have, however, no jurisdiction where the defendant resides out of the Province of Ontario. Ontario Glass Co. v. Swartz, 9 P. R. 225.

The defendants by an agreement under seal with one S. acquired a right of user in certain land for the purpose of pasturing their cattle. There was no demise, or right of distress, or anything in the agreement to make the defendants tenants of S. There was, however, a covenant that S. would not allow his own animals, or those of others to enter upon the land in question. The question whether S. gave the defendants such an interest in the land as entitled them to impound cattle was held not to be a question of title in the sense that it would oust the jurisdiction of the county court. Graham v. Spettigue, *et al.*, 12 A. R. 261.

The plaintiff, having sued in the county court, proved a claim beyond the jurisdiction, whereupon the jury were discharged. He then brought his action in the Queen's Bench, and upon defendant's application an order was made staying proceedings until the plaintiff should discontinue the county court action and pay the costs of it. The order was rescinded, for (1) the county court having no jurisdiction the plaintiff could not discontinue the suit there, which would be a proceeding in the cause; and (2) this suit being for a debt, and not brought oppressively or vexatiously, should not have been stayed. Hodgson v. Graham, 28 Q. B. 127.

In trespass, for entering plaintiff's close and taking his goods defendant pleaded not guilty, that the goods were not the plaintiff's, and justification under a *fi. fa.* Title to land was not brought in question. Held, that the plaintiff on a verdict for \$175 was clearly not entitled to full costs without a certificate. Stewart v. Jarvis, 27 Q. B. 467.

In replevin, defendants avowed under a distress for rent, to which the plaintiff pleaded that he did not hold the land as tenant, etc., as in the avowry alleged. Held, that the title upon this plea did not necessarily come in question, and that the record therefore did not shew a cause of action beyond the jurisdiction. O'Brien v. Welsh, *et al.*, 28 Q. B. 394.

Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the court has no jurisdiction. Trainor v. Holcombe, 7 Q. B. 548.

In trespass, defendant pleaded pleas bringing the title to land in question, accompanying them with the affidavit required by section 27, *infra*. A nonsuit having been ordered; held, upon appeal, that the effect of the pleas was to oust the jurisdiction altogether; that the judge should therefore have refused to entertain the case; and that the judgment of nonsuit must be reversed. Powley v. Whitehead, 16 Q. B. 589.

One H. sold to defendant timber standing on his land, and afterwards conveyed and gave possession of the land to the plaintiff. The defendant pro-

ceeded to take off the timber. Held, that the title to land was not in question, and that an action for trespass to the land would lie in the county court. *Bailey v. Bleecker*, 5 L. J. N. S. 99.

Declaration for converting the plaintiff's dwelling house, with the doors and windows, etc. Plea, that the goods were not the plaintiff's. At the trial in the county court, it appeared that the plaintiff claimed as assignee of a mortgage of the land on which the house stood, and that the dispute was, whether the house was part of the freehold. A verdict having been rendered for the plaintiff, was afterwards set aside, on the ground that the title to land came in question, and that the case should have been stopped upon the plaintiff's evidence. Held, that this was right, and the judgment below was affirmed. *Portman v. Patterson*, 21 Q. B. 237.

Title to land does not, on mere suggestion, necessarily come in question under a plea of not guilty by statute. The general rule is that it must not only be pleaded, but be verified by affidavit. In this case, which was an appeal from the county court; held, that though defendant might have shewn upon the plea of not guilty, that for want of title the plaintiff could not maintain the action for injury to his premises, yet that in the absence of such proof, or a *bona fide* tender thereof, the mere suggestion of it did not preclude the county court from trying the real cause of action, which was within its jurisdiction. *Ball v. The Grand Trunk Railway Company*, 16 C. P. 252.

A county court judge at the trial of a case, upon the application of plaintiff's counsel, struck out a count of the declaration and all pleadings relating thereto, because the pleadings thereunder ousted his jurisdiction, by bringing title to land in question. Held, that he had the power to do so. *Fitzsimmons v. McIntyre*, 5 P. R. 119.

Where a county court cause is entered for trial at the assizes, under 32 V. c. 6, s. 17, s-s. 2 (the Law Reform Act, 1868), the jurisdiction is then only as if it had been tried in the county court. Where in such a case, therefore, the title to land came in question, and a verdict was entered for the defendant. Held, that the proceedings were *coram non iudice*, and the verdict was set aside. *Wetherall v. Garlow*, 30 Q. B. 1.

Declaration, that one A. devised the north half of lot 15 to his son W. in fee, and the south half to his wife J. for life, and after her death to W. in fee; and the plaintiffs claimed from defendant a portion of the first year's rent, which they alleged they were entitled to, and which the defendant had paid to J. after notice. Equitable plea, that W. in his will devised all his lands to the plaintiff in trust for the sole benefit of J. during her life, under which she claimed and received from them the rent. Held, that upon these pleadings the title to land was brought in question, and the jurisdiction ousted. *Fair, et al., v. McCrow*, 31 Q. B. 599.

The plaintiff sued for damages sustained by the defendant cutting timber on his own land, after having sold such timber standing to the plaintiff's assignor. It was determined by the court that the timber sold was an interest in land. Held, that the title to land was brought in question in the action, and therefore, although the plaintiff recovered only \$135, a county court would

have no jurisdiction, and the costs should be on the scale of the high court. *McNeill v. Haines*, 13 P. R. 115.

The plaintiff by his statement of claim alleged that he was and had been for more than six years the owner of certain land, which was unoccupied, and claimed damages for timber cut by the defendant on such land. The defendant by his statement of defence disputed the plaintiff's claim and set up certain facts by way of confession and avoidance. The action was brought in the high court, but the plaintiff only recovered \$120 damages. Held, that under the pleadings plaintiff was obliged to prove his title to the land, and therefore the county court would have had no jurisdiction, and the costs should be on the scale of the high court. *Danaher v. Little*, 13 P. R. 361.

The statement of claim alleged that the defendant was a monthly tenant of the plaintiff's land, and that the plaintiff on a certain day terminated the tenancy by notice, and claimed damages for injuries to the demised premises. The statement of defence denied the allegation that the defendant was the tenant of the plaintiff. Held, that the title was put in issue by such denial, and as the county court would therefore have had no jurisdiction, the costs should be on the scale of the high court, although the plaintiff recovered only \$75; held, also, that the question whether the title was in issue must be determined according to the pleadings, and not according to what took place on the trial or reference. *Worman v. Brady*, 12 P. R. 618.

Where, in an action by a monthly tenant against his landlord and other persons for wrongful entry upon the demised premises, the landlord denied the plaintiff's tenancy. Held, that the title to land was brought in question, and the costs of the plaintiff were properly taxed on the high court scale, although the damages recovered were only \$104. *Worman v. Brady*, 12 P. R. 613, and *Danaher v. Little*, 13 P. R. 361, *supra*, followed; *Tomkins v. Jones*, 22 Q. B. D. 599, specially referred to. *Flett v. Way*, 14 P. R. 312.

The plaintiff agreed to sell to the defendant a parcel of land for \$1,750, of which \$10 was paid on the execution of the written agreement. The agreement contained no provision as to possession, but the defendant went into possession as the purchaser. The plaintiff was unable to make title and the defendant continued in possession for a considerable time. The plaintiff brought a division court action for use and occupation. The defendant set up that the contract had not been rescinded when he gave up possession and that he never became tenant to the plaintiff nor liable to pay rent. Held, that the plaintiff was bound to prove a contract, express or implied, to pay compensation for the use and occupation, and in order to do so it might have been necessary to show when the contract of sale went off; but that was not a bringing of the title into question so as to oust the jurisdiction of the division court. That in prohibition the court must be satisfied that the title really comes in question; it is not enough that some question is raised by the defendant's notice. *Purser v. Bradburne*, 7 P. R. 18, distinguished. *Order of Street, J.*, granting prohibition reversed. *Re Crawford v. Seney*, 17 O. R. 74.

In an action in the common pleas division, for trespass to lands and removal of fixtures, the plaintiff recovered a verdict for \$50. The taxing

officer taxed division court costs to the plaintiff, and full costs to the defendant. The pleadings admitted an entry under an agreement as to placing fixtures, and their removal and appropriation, but put in issue their wrongful removal. Held, that the taxing officer was right, the title to corporeal hereditaments not being in question; held, also, that though the defendant had failed to prove his defence, he was entitled to set off his costs. *Richardson v. Jenkin*, 10 P. R. 292.

In an action against justices of the peace for false imprisonment, etc., the divisional court (10 O. R. 631) ordered judgment to be entered for the plaintiff for \$25, the damages assessed by the jury, leaving the costs to be taxed according to such scale and with such rights as to set-off as the statute and rules of court might direct. Upon appeal from taxation; held, that the action being within the proper competence of the division court (unless the defendant objected thereto), the plaintiff should have costs only on the scale applicable to that court, and the defendants should have their proper costs by way of deduction or set-off. Held, also (Cameron, C.J., *dubitante*), that the effect of R. S. O. c. 73, s. 19, read in connection with section 12 of that Act and with R. S. O. c. 43, s. 18, s-s. 5, R. S. O. c. 47, s. 53, s-s. 7, and R. S. O. c. 50, s. 347, is not to provide that the plaintiff should have costs on the superior court scale when his recovery is within the jurisdiction of an inferior court. Per Cameron, C.J., The case came under section 18 rather than section 19 of R. S. O. c. 73. *Ireland v. Pitcher, et al.*, 11 P. R. 403.

An action was brought in the high court to recover damages for breach of a covenant in a lease by bad husbandry, and the jury found a verdict for \$100. Judgment was entered for that amount with such costs as the law and practice allow. The taxing officer allowed the plaintiff county court costs, and the defendant appealed on the ground that the \$100 damage could have been recovered in the division court, and that plaintiff's costs should have been on the scale of that court, with the usual set-off under Rule 1172. Held, per Street, J., that the action was in reality one for breach of a covenant and not for damages for trespass, and that the action (as measured by the recovery), was within the jurisdiction of the division court. *Talbot v. Poole*, *Globe*, Dec. 23rd, 1891.

19. Subject to the exceptions contained in the last preceding section, the county courts shall have jurisdiction :

1. In all personal actions where the debt or damages claimed do not exceed the sum of \$200;

2. In all causes and actions relating to debt, covenant and contract, to \$400, where the amount is liquidated or ascertained by the act of the parties or by the signature of the defendant;

3. To any amount on bail-bonds given to a sheriff in any case in a county court, whatever may be the penalty ;

4. On recognizance of bail taken in a county court, whatever may be the amount recovered or for which the bail therein may be liable ;

5. In actions of replevin where the value of the goods or other property or effects distrained, taken or detained does not exceed the sum of \$200 as provided in "The Replevin Act."

6. In interpleader matters, as provided by the rules respecting interpleader. R. S. O. 1877, c. 43, s. 19.

R. S. O. c. 55, s. 4, (The Replevin Act) is as follows :—

4. In case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of \$200, and in case the title to land is not brought in question, the action may be brought in the county court of any county wherein the goods or other property or effects have been distrained, taken or detained. R. S. O. 1877, c. 53, s. 4.

As to jurisdiction of district courts in provisional judicial districts see R. S. O. c. 91, ss. 56 & 57, *infra*.

The term "personal actions" means common law actions ; as by 32 V. c. 6, s. 4, the equitable jurisdiction of county courts was taken away. *Re McGugan v. McGugan*, 21 O. R. 295.

An action asking for a declaration of right to rank on an insolvent estate under R. S. O. c. 124, s. 20, s-s. 5, is an action for equitable relief and is not within the jurisdiction of the county court. Judgment of the county court of Huron affirmed. *Whidden v. Jackson*, 18 A. R. 439.

NOTE.—An order was subsequently made in this case, transferring the action from the county court to the high court, under 54 V. c. 14 (*infra*), upon payment by the plaintiff of the costs lost by the action having been improperly brought in the county court : costs of the action to be costs in the cause. (*Globe*, 18th Sept. 1891).

An action was brought in the county court to recover the plaintiff's share of insurance moneys received by the defendants, who were a partnership, the

plaintiff being one of the partners. Prohibition was applied for on the ground that the relief sought was of a purely equitable nature, and that the county court had no jurisdiction, citing *re McGugan v. McGugan*, 21 O. R. 289, and *Whiddon v. Jackson*, 18 A. R. 439, *supra*. It was held by Street, J., that the claim was a purely money demand, and that the county court had power to amend the pleadings. Motion refused with costs. *Re Allen v. Fairfax Cheese Co.*, *Globe*, Jan. 5th, 1892.

The judge of a county court has the right at the trial of a case, where the jurisdiction of the court is denied, to enquire into the facts, so as to ascertain whether or not there be jurisdiction; *ex. gr.* to enquire whether there has been a settlement of accounts between the parties. Until such enquiry has been made, prohibition cannot be granted. In *re Dixon v. Snarr, et al.*, 6 P. R. 336.

The inferior courts can entertain a suit for the balance remaining due upon a written undertaking to pay a larger sum. *Longworth v. McKay, et al.*, 6 O. S. 149.

When there are open running accounts between the plaintiff and the defendant, made up of divisible items, not exceeding in each £25 and the amount due to the plaintiff. If the defendant, however, desires to recover more than will balance the plaintiff's demand, he must give notice of, or plead a set-off to the £25, and claim in his plea or notice to have the amount between the plaintiff's demand and the £25 allowed to him. McLean, J., dissenting, being of opinion that a defendant might recover a balance to any amount beyond the £25, the jurisdiction not being limited as to a defendant's set-off. *Russell v. Conway*, 5 Q. B. 256.

The declaration contained three counts, claiming each £50, and the particulars were, for account rendered £55 15s., less by cash £22 10s.—£33 5s. At the trial the plaintiff relied on the count on account stated, and produced a draft by himself on defendant for £55 15s. 1d., "being the balance in full of your account," and proved that when presented defendant acknowledged the amount to be correct, but refused to accept it, as he was afraid he would be sued. A verdict having been found for £34 3s. 3d., Held, that the claim was within the jurisdiction; and, *semble*, that the evidence of an account stated was sufficient. *McMurtry v. Munro*, 14 Q. B. 166.

Trespass q. c. f. Plea, "that the close was not the close of the plaintiff." Verdict for 1s. damages. Held, that the plaintiff, under 22 Car. 1, c. 9, without a certificate that the title came in question, was entitled to full costs. *Lake v. Briley*, 5 Q. B. 307.

Trespass q. c. f. with a count for taking goods. Plea, not guilty by statute. Verdict for £1 and no certificate. Held, plaintiff not entitled to full costs. *Hawkes v. Richardson*, 9 Q. B. 229.

Trespass q. c. f. Plea, general issue only. Verdict for 20s. A certificate under 22 and 23 Car. I., was refused at the trial. Held, confirming *Hawkes v. Richardson*, 9 Q. B. 229, that the plaintiff was entitled at least to County Court costs. *Davis v. Barnet*, 10 Q. B. 501.

In an action against a road company for obstructing a flow of water from plaintiff's lands, the plea of not guilty by statute, was held not to bring the title to the land in question, so as to entitle the plaintiff to full costs without a certificate. *Overholt v. Paris & Dundas Road Co.*, 7 C. P. 203.

Plaintiff sued for trespass to land, and obtained a verdict for 1s., the pleas being not guilty, not possessed, and *liberum tenementum*; and the judge certified that the action was really brought to try a right, besides the right to recover damages for the trespass complained of. Held, that the certificate alone, taken with the pleadings, was equivalent to an assertion by the judge that the title to land was in question, and entitled the plaintiff to full costs. *Spiers v. Carrique*, 23 Q. B. 585.

Held, that on a plea of non-demisit to a count in covenant, a question of title arises, which entitles the plaintiff to superior court costs, although no certificate be granted. *Purser v. Bradburne*, 7 P. R. 18. See *Davis v. Vandecar*, 28 C. P. at p. 190.

The plaintiffs had judgment and execution against one of the defendants for less than \$200, and sought in this action, though not on behalf of all creditors, to set aside a conveyance by that defendant to the other, as fraudulent. At the time it was brought, the sheriff had other executions in his hands against the same defendant, amounting to more than \$200. Held, that if the plaintiffs had been successful all the executions must have been satisfied out of the property covered by the impeached conveyance, and the provisions of the Creditor's Relief Act would have applied to the case, and therefore the amount of the subject matter involved exceeded \$200, and the costs were taxable on the high court scale. *Dominion Bank v. Heffernan, et al.*, 11 P. R. 504.

The plaintiff was entitled to the lateral support of the defendants' land, in which they made excavations for the purposes of a rink, whereby the plaintiff's land was damaged. The damages were assessed at \$40, but judgment was given for the restoration of the plaintiff's land. Held, that the plaintiff was entitled to full costs. *Snarr v. Granite Curling & Skating Co.*, 1 O. R. 102.

In trespass q. c. f. defendant pleaded that the land was not the plaintiff's, and the plaintiff obtained a verdict for £10. Semble, that he would have been entitled to full costs without a certificate, though title were not brought in question at the trial (as in this case it was held to be). *Humberstone v. Henderson*, 3 P. R. 40.

To an action for negligently setting out fire, which spread to the plaintiff's land and damaged his woods, the defendant, amongst other pleas, pleaded that the land and property were not the plaintiff's. There was a verdict for the plaintiff with \$50 damages, but no certificate for costs. Held, following *Humberstone v. Henderson*, 3 P. R. 40, that the plea raised the question of title to land, and that the plaintiff was therefore entitled to full costs without a certificate. *Coulson v. O'Connell*, 29 C. P. 341.

In trespass q. c. f. and for taking goods, defendant pleaded not guilty; that the goods were not the plaintiff's, and justification under a *2. fa.* Title to land

was not brought in question. Held, that the plaintiff on a verdict for \$175 was clearly not entitled to full costs without a certificate. *Stewart v. Jarvis, et al.*, 27 Q. B. 467.

Upon the evidence in the county court it appeared that the plaintiff, under the common counts, was claiming an amount of \$771, reduced to \$304 by credit given, but not by payment or by set-off agreed to be taken as payment. Held, that \$304 was not an amount liquidated or ascertained by act of the parties, and that the claim therefore was beyond the jurisdiction. A plaintiff cannot by giving credit for a set-off compel defendant to set it up, or give the county court jurisdiction. *Furnival v. Saunders*, 26 Q. B. 119. See, however, *Furnival v. Saunders*, 2 L. J. N. S. 245.

The plaintiff in a county court suit gave credit on a claim of \$300 (for board, etc.) for \$170, being the value of an article received by him from defendant. Held, that although the agreement as to setting off the one against the other be made before the debt for which the action is brought is contracted, yet, if the amount to be allowed to defendant for the article, can be treated as a payment of a portion of plaintiff's claim, and not merely an unliquidated set-off against it, or the transaction can be viewed as a sale first of the article upon an agreement that payment of it was to be made in board, etc., to be furnished by plaintiff to defendant—the court has jurisdiction. *Fleming v. Livingstone*, 6 P. R. 63.

The plaintiff, by special endorsement on his summons, claimed for cash lent and interest, and for a lathe sold, £91 1s. 4d. On the trial he produced a paper signed by the defendant, specifying that he was to pay plaintiff for the lathe the invoice price, and "the charge of freight, duties, etc." Held, clearly an amount liquidated by the act of the act of the parties and therefore within the jurisdiction. *Wallbridge v. Brown*, 18 Q. B. 158.

Held, affirming the judgment of the county court, and following *McPherson v. Forrester*, 11 Q. B. 362, that an action would lie in a county court upon a division court judgment. *Donnelly v. Stewart*, 11 Q. B. 398.

An action will, however, lie in the division court on a county court judgment. *Re Eberts v. Brooke*, 11 P. R. 296.

The plaintiff sued the defendant on a foreign judgment for \$240, and specially endorsed the amount upon the writ of summons. He obtained judgment in default of appearance. Held, that the foreign judgment was not a liquidated or ascertained amount within the meaning of R. S. O. c. 50, s. 153. *Davidson v. Cameron*, 8 P. R. 61.

A county court has jurisdiction to try a claim up to \$400, which is made up of an unliquidated amount of less than \$200, and the balance of a liquidated amount. *Vogt v. Boyle*, 8 P. R. 249.

The plaintiff sued in the county court on the *indebitatus* count for \$375, claiming by his particulars, balance due from defendant to 1st Nov., 1877, \$120; wages from 1st Nov., 1877, to 1st Nov., 1878, \$360; less amount paid \$160. Balance, \$320. On objection being taken at the trial to the jurisdiction of the county court, the plaintiff was allowed to amend by striking out

all the items except the first. Held, affirming the judgment of the county court, that the particulars were no part of the record, which shewed an amount within the jurisdiction of the county court; but held, also, that judgment for that sum would be a bar to any future action for work done at any time before the commencement of this suit. *Davidson v. The Belleville and North Hastings Railway Company*, 5 A. R. 315.

Action for the price of thirty hogsheads of goods. It appeared that K. sold to S., the defendant's testator, a quantity of goods, which K., in his evidence, said was a definite quantity, which he could not recollect, but not less than thirty hogsheads and not more than 40, at the price of \$10 per hogshead. Held, that the demand was liquidated by the act of the parties at the time of sale, and the action was therefore within the jurisdiction of the county court. Per Patterson, J. A., That it was not improper to leave to the jury the question whether the amount was ascertained by the act of the parties. *Watson v. Severn, et al.*, 6 A. R. 559.

In an action in a county court on a promissory note made by the defendant, in which the defendant claimed indemnity against the third party, the third party having appeared, the learned judge of the county court directed certain issues to be tried between the defendant and the third party. At the trial he found for the plaintiff, and investigated accounts between the defendant and the third party amounting to more than \$10,000, upon which he found that a balance of more than \$3,000 would be payable to the defendant, and he directed that the third party should, out of this balance, pay to the defendant the amount of the plaintiff's claim. On a motion for a prohibition; held, that the order directing the issues between the defendant and the third party, with the proceedings taken under it were right. Held, also, that as the only relief which could be given to the defendant against the third party, was protection against the demand of the plaintiff, which was within the pecuniary jurisdiction of the county court, the learned judge was not acting beyond his jurisdiction in investigating accounts of sums beyond his jurisdiction. *Neald v. Corkindale, et al.*, 4 O. R. 317.

S., being indebted to the plaintiffs, entered into an agreement to mortgage to them, certain lands known as the Dominion Hotel property. A mortgage was on the same day executed, but by mistake the Dominion Hotel property was omitted therefrom, and a lot formerly owned by S. adjacent thereto inserted. The defendant had been the tenant of S., and after the mortgage, attorned and paid some rent to the plaintiffs, believing them to have a title in the lands. In an action for arrears of rent; held, affirming the judgment of the County Court of York, that after such attornment and payment of rent, the defendant could not be heard to deny the plaintiff's title, and they being the equitable owners of the land, were entitled to recover. Held, also that the title not being open to question by the defendant, the county court had jurisdiction. *Bank of Montreal v. Gilchrist*, 6 A. R. 659.

An issue had been directed from a county court to one of the superior courts under R. S. O. c. 49, s. 12, to try whether a conveyance of certain lands by a judgment debtor was fraudulent, and the county court had defined the issue to

be tried, and the time and place of trial. The plaintiff, in pursuance of the direction, prepared and delivered the issue to defendant, the grantee in the conveyance, who did not return it; and the plaintiff, after the time for trial had elapsed, applied in the superior court for an order absolute for sale of the land. Held, such order could be made only in the county court, whence the issue had been directed, and that the superior court could only try the issue, and could make no final disposition of the matter; held, also, that the application was not in any event well founded, as the plaintiff should have proceeded with the trial of the issue. *Quere*, as to the granting of a new trial, or reviewing the verdict upon such an issue. *Merchants' Bank v. Brooker*, 8 P. R. 135.

Claim for \$475, ascertained by agreement between the parties, reduced by payment to an amount within county court jurisdiction. The plaintiff, however, before he could recover was obliged to give evidence of the fulfilment of a condition. Held, that the plaintiff was entitled to a certificate for full costs. *Swartwout v. Skead*, 11 L. J. N. S. 329.

The plaintiff purchased by sample from the defendant two lots of barley consisting of ten and five car loads respectively. On receipt of the first lot, the plaintiff, alleging that the bulk did not correspond with the sample, claimed \$200 for inferiority in quality. The defendant disputed any liability, and the plaintiff threatened to dishonour the draft which had been drawn on him for the price. In order to sustain his credit with the bank, the defendant telegraphed the plaintiff to accept, and that he would accept the plaintiff's draft for \$200. The defendant's draft for the price, though the defendant was not aware of it, had then been paid by the plaintiff. A deduction of \$100 from the price of the second lot of five car loads was subsequently demanded on the same ground, and the plaintiff refused to pay the defendant's draft for that lot unless he sent a cheque for that amount and instructed the bank to pay the plaintiff's dishonoured draft for \$200 claimed in respect of the first lot. The defendant telegraphed the plaintiff: "Accept my draft. Will be down Wednesday and pay you." The plaintiff having paid the second draft, sued the defendant in the county court for \$300. Held, reversing the judgment of the court below, per Burton and Patterson, J.J.A., that the sums of \$200 and \$100 were both liquidated by the act of the parties; that the whole demand was therefore within the jurisdiction of the county court, and that plaintiff was entitled to recover. Per Hagarty, C.J.O., without deciding that either demand was liquidated, the court in this case had jurisdiction. It cannot entertain any unliquidated cause of action over \$200; but it has jurisdiction to try any number of unliquidated causes of action in debt, covenant or contract so long as each does not exceed \$200, and the aggregate does not exceed \$400. (This latter opinion was expressly dissented from by the majority of the court.) *McLaughlin v. Schaefer*, 13 A. R. 253.

In an action of replevin brought in the county court of Haldimand for a mare taken by the defendant from the plaintiff's close in that county, removed to the County of Brant, and there detained until replevied. Held, that the taking could not be justified under a warrant issued for the arrest of the plaintiff on a charge of stealing the mare; and although the original taking was justified under a search warrant issued in Haldimand, to search the plaintiff's

premises in Haldimand for the mare, and to bring it before a justice of that county, yet the subsequent removal to the County of Brant and detention there were not, and constituted the defendant a trespasser *ab initio*, and therefore the county court of Haldimand had jurisdiction to replevy the goods in Brant. *Hoover v. Craig, et al.*, 12 A. R. 72.

The plaintiff agreed to sell the defendant a piano for \$400, to be paid by notes at one and two years, with interest, with a rebate for cash. The piano was delivered at the defendant's residence, who after using it for some time objected to retain it, and refused to give the notes or pay the stipulated price. The plaintiff thereupon sued the defendant in the county court, claiming the \$400 and interest. At the trial leave was given to strike out the words "with interest." Held, that the amount was ascertained by the act of the parties, and that defendant having neglected to pay either by notes or cash, the plaintiff was entitled to recover in an action for goods sold and delivered. *Greenizen v. Burns*, 13 A. R. 481.

An action for the price of two distinct parcels of goods sold and delivered. The defendants accepted a bill of exchange for each parcel, one bill being for \$103.80, and the other for \$106.40. At the time the action was brought the second bill had not matured, as was alleged by the defendant and afterwards admitted by the plaintiffs. Upon the application of the plaintiffs the master made an order, under Rule 322, Ontario Judicature Act, for final judgment against the defendants for the first parcel of goods sold and delivered, that is, for \$103.80, with interest and costs of suit, including the costs of the application, "to be taxed according to the course and practice of this court." Under this order the taxing officer allowed the plaintiffs county court costs on that part of the plaintiff's claim upon which they obtained the order for judgment, and he allowed to the defendants the full costs of the high court of justice on that part of the plaintiff's claim upon which the defendants succeeded, that is, upon the claim for \$106.40, the price of the second parcel of goods. Upon an application by the defendants to revise the taxation; held, that it was the duty of the taxing officer to look at the pleadings, and if necessary receive affidavits so as to ascertain the facts of the case; that division court costs only should have been taxed to the plaintiffs, as the amount for which they obtained judgment was ascertained by the signature of the defendants, and was therefore within the competence of the division court; that the defendants should have superior court costs down to and including the statement of defence, which would not have been required but for the plaintiffs claiming improperly the price of the second parcel of goods, which was not due, and also their costs of this application, with a set-off *pro tanto* against the plaintiffs' judgment and costs. *White Sewing Machine Company v. Belfry, et al.*, 10 P. R. 64.

An action in the common pleas division for \$288.20, the balance of a claim of \$1,828.20 for 8,310 lbs. of butter at 22c. per lb. \$1,600 had been paid on account of the claim. The plaintiff obtained a verdict for \$228.20. No certificate for costs was asked for at the trial. Held, on a motion to a judge for an order directing the defendant to pay to the plaintiff full costs without deduction or set-off, that the amount was liquidated by the act of the parties, within

the meaning of R. S. O. c. 43, s. 19, s.s. 2, and the plaintiff, without a judge's certificate, was entitled to county court costs only. *Durnin v. McLean*, 10 P. R. 295.

At the trial the learned judge only allowed county court costs. On shewing cause to the defendants' motion, the plaintiff, who had not moved, asked to have the direction as to costs varied, and full costs allowed; but the court, in the absence of a substantive motion therefor, refused to interfere. *Dyment v. The Northern and North Western Railway Co.*, 11 O. R. 343.

Plaintiff sued defendant for goods supplied, amounting to \$224. There was no evidence that the articles were made or supplied at an agreed price, or to show that the amount claimed was ascertained by the act of the parties. Held, that plaintiff was entitled to costs on the superior scale. The mere rendering of an account with prices stated is not ascertaining the amount by the act of the parties. *Montgomery v. McDonald*, 1 Man. L. R. 232.

The plaintiff in an action in the high court of justice claimed \$206.14, the balance of an account of \$896 for rent and goods sold and delivered. The defendants in their statement of defence admitted a liability of \$170.30, but claimed a credit of \$81.14, leaving a balance due of \$89.16, which they brought into court with their defence. The plaintiff served notice under rule 218 accepting the amount paid in full of the claim, and proceeded to tax his costs. Upon taxation a question arose as to the scale of the costs; held, that the provision in rule 218, that the plaintiff may tax his costs, does not give him costs according to any higher scale than if he had entered judgment for the sum which he received out of court; the costs should therefore be on the county court scale, as the whole amount of the account was over \$800, and the amount admitted by the defendant was \$170.30. *Chick v. Toronto Electric Light Co.*, 12 P. R. 58.

Action on bond to secure indebtedness of \$810. The bond was payable by instalments, the first of which for \$161.40, was overdue and action was brought in the county court to recover that amount. The condition of the bond referred to a contemporaneous mortgage containing a covenant that in default of payment of any instalment, the whole sum unpaid should immediately become due and payable. Held, that the debt was indivisible and that the county court had no jurisdiction to give judgment for the amount of the overdue instalment. *Bath v. Dennison, et al.*, 12 N. S. R. 303.

Where, in an action in the county court, judgment is given for a sum in itself within the jurisdiction of the court, but which is the balance of a sum beyond the jurisdiction, and which was arrived at not by any settlement or statement of account between the parties, but as the ascertainment of a disputed account. Held, this was the allowance of a claim beyond the jurisdiction of the court, and a writ of prohibition was granted. *Sherwood v. Cline*, 17 O. R. 30.

Pending negotiations for the sale by the plaintiff to the defendant of a certain business as a going concern, the defendant entered into possession, made sales, and received moneys, entering the receipts in a cash book. The negotiations fell through, and the plaintiff brought this action in the county court to

recover "\$271.03 the return of the moneys received by the defendant belonging to the plaintiff, being proceeds from sales of goods in plaintiff's shop, as follows;" setting forth the sums received on each day by the defendant. Held, that this sum was not ascertained by its receipt by the defendant, and the bringing of the action by the plaintiff for the sum so received. The increased jurisdiction applies only in the comparatively plain and simple cases where by the act of the parties or the signature of the defendant the amount is liquidated or ascertained as being due from one party to the other on account of some debt, covenant, or contract between them; such ascertainment of the amount by the act of the parties being somewhat equivalent to the stating of an account between them. Judgment of the County Court of Middlesex affirmed. *Robb v. Murray*, 16 A. R. 503.

Rent being due by A. to B., A. was served as garnishee with division court summonses by E. and G., each claiming part of the rent. A. refusing to pay his rent unless he was protected from these claims, he was sued by B. for the full amount of the rent in a county court. Before this action was begun, G. presented to A. an order upon him signed by B. for part of the rent due. A. applied to a judge of the high court of justice in chambers for an interpleader order. The affidavits on which he moved were entitled, "In the High Court of Justice, Chancery Division, between A., applicant, and B. and others, claimants." Held, that A. was entitled to be relieved by calling on the rival parties to interplead, under the procedure indicated by Rules 1141, *et seq.*; and an objection to the manner of entitling the affidavits was overruled. There was no jurisdiction in the county court to give relief by way of interpleader in the action brought by B.; the jurisdiction in that court being limited by Rules 1162, *et seq.*, to proceedings against absconding debtors, and after judgment when execution has issued. G.'s claim might have been litigated in the county court, and would not have been the subject of interpleader proceedings; but the order made being for a stay of the county court action and payment into court by A. of the rent, G.'s claim should be the subject of inquiry in the high court. Held, also, that A.'s costs of the application should be borne by E. and G., who submitted to have their claims barred, and who had been the cause of the expense and delay, and that there should be no costs to either party of the county court action. *Re Anderson v. Barber*, 13 P. R. 21.

The plaintiff held the defendant's note for \$300, and gave it back to the defendant to hold until the latter should be free from a certain liability as surety. After he became freed he refused to give up the note, and destroyed it, and this action was brought for breach of his contract to return the note. The action was referred to a referee, who found the plaintiff was entitled to \$314 damages, being the amount of the note and interest. Held, that so soon as the facts relating to the note had been arrived at, the *quantum* of damages was a fixed amount ascertained by calculating the amount of the defendant's liability upon the note; and therefore the claim was within the jurisdiction of the county court, under R. S. O. c. 47, s. 19, s-s. 2; and the plaintiff was entitled to costs upon the county court scale only. The defendant was entitled to set off the difference between the county court and high court costs of his defence.

Before a motion for costs was made, the defendant offered to pay the plaintiff's costs upon the county court scale. Held, that this was not an offer which the plaintiff was bound to accept, and the plaintiff was entitled to the costs of the motion on the county court scale. *Johnson v. Kenyon*, 13 P. R. 350.

The following Con. Rules apply to interpleader in county courts :—

1162. In case any claim is made to any goods or chattels taken or intended to be taken under an attachment against an absconding debtor or in execution, under any process issued out of any county court, or to the proceeds or value thereof, all the proceedings shall be had and taken in the county court of the county or union of counties in which such goods or chattels are so taken or intended to be taken, or before the judge of such court notwithstanding that there are writs from two or more county courts against the same goods, and whether at the suit or instance of the same plaintiff or different plaintiffs; or the said court or judge in any such case, if it appears more convenient and more conducive to the ends of justice so to do, may order that the said proceedings be had and taken in the county court from which such process issued, or before the judge of such court. R. S. O. 1877, c. 54, s. 22. 49 V. c. 16, s. 18.

1168. (1) Where the amount claimed under or by virtue of an execution, or of an attachment against an absconding debtor in the sheriff's or other officer's hands, issued out of the high court or under executions or attachments in the sheriff's or other officer's hands, issued out of different county courts, or out of one or more county courts, or one or more division courts, does not exceed the sum of \$400, exclusive of interest and sheriff's or other officer's costs, or when the goods seized are not, in the opinion of the judge, or other person making the order, of the value of more than \$400, the order directing an issue to be tried may direct that the issue shall be drawn up and tried in the county court of the county in which the issue would, under the provisions of the preceding rule be tried, and in such case the issue shall be drawn up, filed and tried in the county court, and all subsequent proceedings therein, up to and inclusive of judgment and execution, shall be had and taken in the county court which shall have jurisdiction in the premises as fully as though

the writ of execution or attachment had issued out of a county court.

(2) When an application is made for an order, under this rule upon the ground that the goods seized are not of the value of more than \$400, a list of the goods and of the value placed upon them shall be set out in the affidavit or affidavits, upon which the application is based. 44 V. c. 7, s. 1; 49 V. c. 16, s. 42.

(3) The judge making the order shall have the like powers as are provided in rule 1157 with regard to the proceedings therein mentioned. 49 V. c. 16, s. 42 (a).

1164. The proceedings for and relating to the order for costs, and for obtaining money out of court, when the same has been paid into court by the sheriff, and for such other purposes as may be necessary, may, in the cases provided for in the preceding rule, be made to the judge of the county court who tried the issue, and he shall have power and authority to make such order in the premises as a judge has heretofore had in such cases, but the application for such order may be made as now in the original cause. 44 V. c. 7, s. 2.

1165. In respect of all such proceedings as shall be had in the county court, the costs and disbursements shall be taxed upon the county court scale. 44 V. c. 7, s. 3.

1166. Any party who is dissatisfied with the decision of the judge of a county court upon any question of law or fact arising in the course of interpleader proceedings, may appeal from such decision to the court of appeal, and sections 40 to 52 inclusive of "The County Courts' Act" shall extend and apply to and shall regulate and govern the manner of prosecuting and determining such appeal. R. S. O. 1877, c. 54, s. 28.

An interpleader issue arising out of an action in the chancery division of the high court of justice was sent to a county court for trial by order made in chambers. Held, that it was to be intended that the order was made under 44 V. c. 7 (Ont.), rather than under the interpleader jurisdiction of the old court of chancery; and that being so, that a divisional court of the high court of justice had no jurisdiction to hear an appeal from the judgment of the county court on such issue, and that such appeal should have been made to

the court of appeal, under R. S. O. c. 54, s. 23. *Close v. Exchange Bank*, 11 P. R. 186.

Held, that interpleader being a proceeding in the action, a county court judge under Rule 422, O. J. Act, has jurisdiction to entertain it, but in this case the judge having disposed of the matter summarily without the consent of the parties, an issue was directed. *Coulson v. Spiers*, 9 P. R. 491.

Held, that in case of interpleader by a sheriff between two claimants, one a plaintiff in a superior court suit, the application for an interpleader order was properly made in the superior court, although the seizure was made under the county court writ before the superior court writ came into the sheriff's hands. *Strange v. Toronto Telegraph Co.*, 8 P. R. 1.

Under the following Con. Rules the county courts have jurisdiction in summary enquiries into fraudulent conveyances :—

1007. Where a judgment creditor or a person entitled to money under a judgment or order, alleges that the debtor or person who is to pay, has made a conveyance of his lands which is void, as being made to delay, hinder or defraud creditors or a creditor, it shall not be necessary to institute an action for the purpose of setting aside such conveyance, but a motion may be made to the court or a judge in chambers by the judgment creditor calling upon the judgment debtor or person who is to pay, and the person to whom the conveyance has been made, or who have acquired any interest thereunder, to show cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution. R. S. O. 1877, c. 49, s. 10.

1008. Where any judgment creditor in an action, or a person entitled under a judgment or order as aforesaid, alleges that the debtor or person to pay is entitled to or has an interest in any land which under the former practice could not be sold under legal process, but could be rendered available in an action for equitable execution by sale for satisfaction of the debt, the court or a judge in chambers may, upon the application of the creditor, call upon the debtor or person who is to pay, and the trustee or other person having the legal estate in the land in question, to show cause why the said land or the interest therein of the debtor or the person who is to pay, or a competent part of the said land,

should not be sold to realize the amount to be levied under the execution. R. S. O. 1877, c. 49, s. 11.

1009. Upon any application under either of the two preceding rules, such proceedings shall be had, either in a summary way, or by the trial of an issue, or by inquiry before an officer of the court, or by an action, or otherwise, as the court or judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the lands, or the debtor's or other person's interest therein are liable for the satisfaction of the execution; but if in a case in a county court there is a dispute as to material facts, and the value of the land, or the debtor's or other person's interest therein, appears to be over \$400, the court or judge shall direct the trial of an issue in the high court, and may name the county in which the trial is to take place, subject to any order that the high court or a judge thereof may see fit to make in that behalf. R. S. O. 1877, c. 49, s. 12.

1010. In county court cases the application under rules 1007 and 1008 shall be made to the county court, or to a judge of a county court of the county or union of counties in which the lands to which the application relates are situate, unless the said court or judge upon the hearing of the application deems it more convenient and more conducive to the ends of justice to order, and orders, that the proceedings be had and taken in the court or before a judge of the court, from which the execution issued; in which case the clerk of the county court of the county in which the land lies shall transmit the papers filed with him, together with the order of transference, to the clerk of the county court from which the execution issued. R. S. O. 1877, s. 49, s. 13.

20. (1) The several county courts shall have jurisdiction in actions for the recovery of corporeal hereditaments (where the yearly value of the premises, or the rent payable in respect thereof, does not exceed \$200) in the following cases, namely :

- (a) Where the term and interest of the tenant of such corporeal hereditament has expired, or has been determined by the landlord or the tenant, by a legal notice to quit :
- (b) Where the rent of such corporeal hereditament is sixty days in arrear, and the landlord has the right by law to re-enter for non-payment thereof :

and in respect to such actions the said courts shall have and exercise the same powers as belong to and may be exercised by the high court, in and in respect to actions for the recovery of land.

(2). Every such action shall be brought in the county court of the county in which the premises sought to be recovered lie.

(3). The term "Landlord," as used in this section shall be understood to mean the person entitled to the immediate reversion of the lands ; or if the property be holden in joint tenancy, coparcenary or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion. R. S. O. 1877, c. 43, ss. 20-22.

The fact of the pendency of an action of ejectment is not a bar to the plaintiff's proceeding in the county court under this section. *Williamson v. Bissil*, 31 L. J. Ex. 131 ; 7 H. & N. 391.

It has been held that the jurisdiction is not available, except where there is the ordinary relation of landlord and tenant ; and therefore a mortgagee cannot recover possession from a person who has entered into the occupation subsequently to the mortgage, and who has not become tenant to the mortgagee. *Jones v. Owen*, 18 L. J. Q. B. 8.

Nor can a person who is the legal owner of the premises, and who claims to be the landlord, where the occupier is in possession under an agreement for

purchase, the relation between the parties not being the ordinary relation of landlord and tenant. *Banks v. Rebbeck*, 20 L. J. Q. B. 476.

In 1857 a defendant was entitled to £500, with interest, charged on Whiteacre, which belonged to A.; and it was orally agreed that the defendant should rent Blackacre from A., and should deduct the interest on the £500 from the rent. In 1858, A. conveyed the reversion of Blackacre to the plaintiff. Held, that the defendant was a mere tenant of Blackacre, and that the plaintiff could determine the tenancy by notice, and recover possession. *Jones v. Thomas*, 4 L. T. N. S. 210.

Where a defendant entered into a written agreement with the plaintiff to take certain premises at a rent of 20s. per week, payable on demand, and subject to four weeks' notice to quit on either side; and during the continuancy of this tenancy an oral agreement was made between the parties that the rent should be 16s. a week, and the defendant for several weeks paid this reduced amount, and on one occasion submitted to a distress. Held, that there was no fresh demise, and that the original rent continued to be the rent payable for the premises, and therefore exceeded the limit of the jurisdiction. *Crowley v. Vitty*, 7 Ex. 319.

The question whether the tenancy has been "duly determined by legal notice to quit," is one upon which the decision of the county court judge is conclusive between the parties. *Fearon v. Norval* (1), 17 L. J. Q. B. 161.

In ejectment in the county court, under this section, it appeared that the defendant held the land under a verbal lease for a year, from 7th June, from one B. with the arrangement that if B. sold, defendant would give up possession at the end of the year. B., in January, sold to the plaintiff, of which defendant had notice, and promised to give up possession, and the plaintiff gave defendant a notice to quit on the 8th June, his term having expired. At the trial the deed from B. to the plaintiff and the notice to quit were proved. Held, a case within the statute; that defendant's term was put an end to on the 7th June, and that there was no dispute as to title to exclude the jurisdiction, which was clearly not ousted by the mere proof of the plaintiff's paper title. *Neads v. McMillan*, 29 U. C. Q. B. 415.

The plaintiff let to the defendant a house for three years at a rent of £3 6s. 8d. a month, payable monthly; the agreement of tenancy contained a power of re-entry on non-payment of any part of the rent for twenty-one days after the day of payment, or in case of the breach or non-performance of any of the conditions in the agreement. A month's rent having been in arrear for more than twenty-one days, the plaintiff gave defendant notice to quit at the end of the next month of the term, alleging as breaches non-payment of rent and a breach of a condition in the agreement. Held, that a "legal notice to quit" must be taken to mean the notice to quit required by law and not one depending on the express stipulation of the parties; that the tenancy had not therefore been determined within the meaning of the section, and that an action to recover possession of the premises could not be brought in the county court. *Friend v. Shaw*, 20 Q. B. D. 374.

See R. S. O. c. 144, as to summary proceedings before county judges against overholding tenants.

Prior to 54 V. c. 14 (*infra*, note to s. 25), where an action beyond the jurisdiction of the county court was brought in that court, and it could not be removed into the high court by *certiorari* under s. 23, prohibition would be granted, staying the action. Now, however, by the above act, all such actions may be transferred to the high court, no matter from what cause the want of jurisdiction arises.

Under the following Con. Rules, the penalty of loss of costs, and payment of part of the defendant's costs are imposed on a plaintiff who brings an action in a higher court than the one which has jurisdiction to try it. By Con. Rule 1170 (u), the "costs of proceedings before judicial officers unless otherwise disposed of, shall be in their discretion, subject to appeal." The history and construction of this Rule are given in *re* Young, 14 P. R. 303. In that matter, a judge of a county court, acting under R. S. O. c. 124, s. 6, ordered the removal of an assignee and gave costs against the person removed. It was held that he exercised a statutory jurisdiction as *persona designata*, and had no power to order payment of costs, the proceedings in such case not being in any court, and this rule not applying to them.

1172. In case an action of the proper competence of a county court is brought in the high court, or in case an action of the proper competence of a division court is brought in a high court, or in a county court, and is tried by jury, and the judge or court makes no order respecting the costs, the plaintiff shall recover only county court costs, or division court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between solicitor and client, and so much thereof as exceeds the taxable costs of defence which would have been incurred in the county court or division court, shall, on entering judgment, be set off and allowed by the taxing officer against the plaintiff's county court or division court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary, and if the amount of costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff. See R. S. O. 1877, c. 50, s. 847, and J. A. Rule, 512, *first part*.

(u) The event shall in such case be to recover costs according to such scale, subject to such rights of set off as to costs, as are herein mentioned. J. A. Rule, 512, *last part*.

It will be observed that this Rule applies only to cases "tried by jury." It is a re-enactment of the provisions of section 347 of the Common Law Procedure Act, the application of which had been considered doubtful. See *Whitehead v. Tait*, 3 C. L. T. 122; *McGarvey v. Strathroy*, 11 P. R. 87; *Wilson v. Roberts*, 11 P. R. 412.

As to interpretation of this Rule, see *Ireland v. Pitcher*, 11 P. R. 403; *supra*, p. 44; and as to meaning of "the event," see *Andrews v. City of London*, 12 P. R. 44, *infra*, note to Rule 1174.

In an action for damages for breach of a contract, the jury awarded the plaintiff \$68.50, and the trial judge entered judgment for that amount, and certified to entitle to costs on the division court scale, and to prevent the defendant from setting off high court costs. On appeal a divisional court varied the order as to costs so as to give the plaintiff such costs only as he would have recovered under this Rule where the judge at trial did not certify. *Livernois v. Bailey*, 12 P. R. 535; affirmed in appeal, 13 P. R. 62.

In an action in a county court, tried by a judge without a jury, judgment was given for \$36, no order being made as to costs. Held, that no costs should be awarded, and a mandamus was granted to the county court clerk to enter up judgment for the plaintiff without costs, and without allowing defendant to set off against the judgment the difference between county and division court costs. *Re Great Western Advertising Company v. Rainor*, 9 P. R. 107.

The defendant, for valuable consideration, executed a bond in favour of the plaintiff, conditioned for the payment of the principal and interest secured by a mortgage executed by the plaintiff. The defendant having made default in payment of the interest for four years, the plaintiff was compelled to pay the arrears, amounting in all, together with interest on the amount unpaid, to \$163, for the recovery of which he sued the defendant in the county court when judgment was given for that sum, together with division court costs, against which the amount of the defendant's county court costs was ordered to be set off. Held, (reversing the judgment of the court below), (1) that the debt or money demand arose from payment of the money by the plaintiff, and the amount of it was not ascertained by the signing of the bond. (2) That under the circumstances the judge had no discretion to refuse the plaintiff who had been successful in the litigation, his full county court costs. *Mitchell v. Vandusen*, 14 A. R. 517, considered and followed; *Kinsey v. Roche*, 8 P. R. 515; *Wiltzie v. Ward*, 8 A. R. 549; *Forfar v. Climie*, 10 P. R. 90, approved; *Graham v. Tomlinson*, 12 P. R. 367, referred to. *McDermid v. McDermid*, 15 A. R. 287.

The plaintiff in his statement of claim alleged certain transactions between him and the defendant, in the whole comprehending over \$1,000, and claimed a balance of \$169.72 and interest from the 1st January, 1888. The defendant by his statement of defence denied that he was indebted to the plaintiff in any sum, and alleged that the plaintiff was indebted to him for goods supplied and on certain promissory notes in the sum of \$1,325.74, for which he counter-claimed. Held, that the matter of a counter-claim was really a set-off, and even if it were not improper to call it a counter-claim,

having regard to Rule 373, this could not change its real character. *Cutler v. Morse*, 12 P. R. 594, referred to. The action was tried without a jury, and the plaintiff recovered judgment for \$120.75, "together with his costs of action, to be taxed according to the proper scale applicable." Held, that a county court has jurisdiction to entertain and investigate accounts and claims of suitors, however large, provided the amount sought to be recovered does not exceed the sum prescribed by the Act; and in this case a county court would have had jurisdiction. The case, not having been tried by a jury, did not fall under Rule 1172 and the determination of the scale of costs was a matter in the discretion of the court. In the exercise of such discretion the principles of Rule 1172 were applied to the case, and the plaintiff was allowed costs on the county court scale, and the defendant the excess of his costs incurred in the high court, as between solicitor and client, over the amount which he would have incurred in the county court, to be set off. *Bennett v. White*, 13 P. R. 149.

In an action of trespass by a mortgagor of chattels against the mortgagee for illegal seizure, a verdict was found for the plaintiff. The value of the goods was found to be \$100, and the mortgage was \$50, leaving the plaintiff's interest \$50. Judgment was entered for plaintiff for \$50, with costs on the county court scale, with a set-off of excess over county court costs. On appeal to the divisional court, costs were allowed on the division court scale only with the usual set-off. *Callicott v. McKinlay*, 9 C. L. T. 106.

The plaintiffs, sub-contractors, in an action brought in the high court to enforce a mechanics' lien, claimed against the contractor \$245.29, and recovered \$284.54. They claimed a lien on the land for the amount due them, but upon the investigation of accounts to the extent of upwards of \$1,700 between the contractor and the land owner it was found that the latter owed only \$63.79, and the plaintiffs' lien was limited to this amount. Held, upon an appeal from taxation of costs, that the contractor could not have sued the land-owner in the division court to recover the balance of \$63.79, but must have proceeded in the county court, and the plaintiffs suing upon the same claim, were therefore entitled to county court costs; and as the plaintiffs' claim was also beyond the jurisdiction of the division court, upon any construction of section 28 of the Mechanics' Lien Act, R. S. O. c. 126, the plaintiffs could not have brought their action in the division court. Held, also that, as the plaintiffs could not have hoped to establish a case which would have entitled them to high court costs, the defendant land-owner should be allowed a set-off of the excess of his costs incurred in the high court over what he would have incurred in the county court; but as the action was tried without a jury and Rule 1172 did not apply, the taxing officer had no power to allow this set-off without the direction of the court; and the judgment of the court was amended so as to meet the case. *Truax v. Dixon*, 13 P. R. 279.

In a recent case of *Anderson v. Farquhar* (*Globe*, Nov. 26th, 1891), which was brought in the high court for \$525.66, Falconbridge J. gave judgment for the plaintiff for \$35, without costs, instead of allowing county court costs, with a set-off of high court costs.

The words of Rule 1172, "the judge or court makes no order respecting the costs," do not confer any wholly discretionary power on the judge, but must be read with Rule 1170 as referring to an order made "for good cause." And where, in an action in a county court for damages for bodily injuries sustained by the plaintiff through the alleged negligence of the defendant, the jury found for the plaintiff and assessed the damages at \$30, and added that the defendant should pay "the court expenses," and the judge made an order that the defendant should have full county court costs, and that the defendant should not have the set-off provided by Rule 1172, because in his opinion, the injury done to the plaintiff was attended by circumstances of great aggravation, and the jury ought to have given larger damages. Held, Osler, J.A., dissenting, that these words were not circumstances which constituted "good cause," within the meaning of Rule 1170; for the very matters relied upon by the judge as "good cause" had been passed upon adversely by the jury; and therefore the costs should follow the event under Rule 1172. *Beckett v. Stiles*, 5 Times L. R. 88, followed. *McNair v. Boyd*, 14 P. R. 132.

The defendant signed a writing in these words: "Brantford, October 9th, 1886. If anything happens to me sudden, this is to insure my son Joseph (the plaintiff) to take \$100 from his sister Hannah's share, to repay money lent to her; if I live until this time next year I will settle it with him." Held, that this was not a sufficient ascertainment of the amount due, by the signature of the defendant, within the meaning of R. S. O. c. 51, s. 70, to allow of a claim upon it and other items (amounting to about \$60) being joined in a division court action. *McDermid v. McDermid*, 15 A. R. 287, followed; *re Graham v. Tomlinson*, 12 P. R. 367, referred to. *Moses v. Moses*, 13 P. R. 12; affirmed 13 P. R. 144. See, however, *re Smith v. Grant*, 10 C. L. T. 190.

In an action tried by a jury, where the defendant recovers on a counter-claim, the costs should be on the scale of the court in which the action is brought by the plaintiff, unless the judge for good cause makes a different order. The fact that the recovery is a sum within the jurisdiction of an inferior court is not good cause for such an order. *Foster v. Viegel*, 13 P. R. 133.

1178. The plaintiff in any action which is of the proper competence of a division court but is brought in a county court shall not be entitled to full county court costs, if judgment is recovered in such action by default for want of an appearance or defence, or on the ground only of a commission for the taking of evidence out of the Province having been issued therein or necessary, whether judgment be recovered by default or otherwise. R. S. O. 1877, c. 50, s. 349.

This is because a division court has power, under the following section of the Division Court Act, as amended, to issue such a commission:

135. In case the plaintiff or defendant in an action in a division court is desirous of having at the trial thereof the testi-

mony of a person residing without the limits of the province, the judge of the county court of the county wherein the action is pending, may, upon the application of the plaintiff or defendant, and upon hearing the parties, order the issue of a commission out of and under the seal of the division court to a commissioner to take the examination of such person. R. S. O. 1877, c. 47, s. 99 (amended by 52 V. c. 12, s. 13).

1174. In every case in which judgment is entered without trial, or the decision of a court or judge, or order as to the costs, and where the amount of judgment, *prima facie*, appears to be within the jurisdiction of an inferior court, the taxing officer shall not tax full costs of the high court, without proof on affidavit to his satisfaction that the action was properly instituted therein; and if properly within the jurisdiction of the county, or division court, then the taxation shall be on the scale of fees, in such court. J. A. Rule, 511. 48 V. c. 14, s. 22.

The parties by consent allowed a verdict for the plaintiff for \$1 to be taken before the judge at the assizes, to be altered according to the result of a reference agreed upon, and also agreed that the costs should abide the event. The action was for damages for negligence, and the award was in favour of the plaintiff for \$85. A question having arisen as to the scale of costs; held, following *Watson v. Garrett*, 3 P. R. 74, and *Hyde v. Beardsley*, 18 Q. B. D. 244, that "costs to abide the event" does not mean that the plaintiff, if successful, shall necessarily have full costs, but that he shall have such costs as, under the statutes and rules of court, a plaintiff recovering the amount that he recovers, by the event is entitled to. Held, also, following *Cumberland v. Ridout*, 3 P. R. 14, that the final judgment by means of the reference was to be regarded as obtained without a trial, and the costs therefore depended upon Rule 511, under which the taxing officer was directed to proceed. There should be no set-off of costs; such a result is not contemplated by Rule 511, and it is not a fair construction to incorporate with it the provisions of R. S. O. c. 50, s. 346, that section being restricted to a case where there is a trial. *White v. Belfry*, 10 P. R. 64, commented upon. *Andrew v. City of London*, 12 P. R. 44.

Where in an action in the high court an order was made by a local judge upon consent, allowing the plaintiff to sign judgment for \$233, with costs of suit to be taxed; held, that full costs were not implied unless it was a case of suing in the high court; and the jurisdiction of the taxing officer to decide as to the scale of costs was not ousted. History of Rule 1174.

The claim was \$233, the price of furniture sold by the plaintiffs to the defendant, according to prices indorsed on the writ, and duly delivered. By his statement of defence the defendant admitted \$160.50, which he paid into court. As to the balance, he pleaded that it was not payable because the goods

ordered in respect thereof were not supplied or delivered, and that there was no agreement therefor within the statute of frauds. Held, that the pleadings only must be looked at to ascertain what was in dispute; that the cause of action was one and indivisible; and that the whole cause of action was not for an ascertained amount within county court competence. *Vogt v. Boyle*, 8 P. R. 249, distinguished. *Brown v. Hose*, 14 P. R. 3.

21. Every county court shall as regards all causes of action within its jurisdiction for the time being, have power to grant and shall grant in any proceeding before such court such relief, redress, or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties, forfeitures and agreements for liquidated damages, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the high court. 44 V. c. 5, s. 77; 49 V. c. 16, s. 38.

See *Whiddon v. Jackson*, 18 A. R. 439, *supra*, note to s. 19; also *re McGugan v. McGugan*, 21 O. R. 295, *infra*, note to s. 38.

22. Where in a proceeding before a county court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon such counter-claim. 44 V. c. 5, s. 78.

See c. 44, s. 158, *infra*, note to s. 25.

The power to grant relief in respect of such counter-claim is limited to the same amount as the plaintiff has claimed in the action: *Davis v. Flagstaff Mining Co.*, 3 C. P. D. 228.

The relief which a defendant can obtain against a third party brought in under Con. Rule 328, is similarly limited to protection against the plaintiff's demand: *Neald v. Corkindale*, 4 O. R. 317, *supra*, note to s. 19.

A defendant who has obtained a judgment in a county court on a counter-claim the amount of which is beyond the jurisdiction of that court, may sue in the high court therefor, and the defendant in the high court is estopped from denying the cause of action, the only question being the amount of damages: *Webster v. Armstrong* 54 L. J. Q. B. 236.

REMOVAL OF ACTIONS BY CERTIORARI.

23. (1) Where it appears in an action otherwise of the proper competency of the county court that such court has not cognizance thereof from the title to land being brought in question, or from the validity of a devise, bequest, or limitation under a will or settlement being disputed, a judge of the high court or the judge of the county court before whom the cause is pending, may order a writ of *certiorari* to issue out of the high court, to remove the cause into the high court; and the cause when removed into the high court shall be proceeded with in the said court in the manner pointed out in section 25 of this Act.

(2) The judge making the order may in his discretion make and impose terms on the party applying for the *certiorari*, as to payment of costs, giving security for debt or costs, or such other terms as he thinks fit.

(3) Where the writ is issued on the order of a judge of a county court, a judge of the high court

sitting in chambers at Toronto, may rescind the order, or vary the terms thereof or imposed thereby. R. S. O. 1877, c. 43, s. 24.

The plaintiff moved for an order removing this action from a county court to the high court, the action having been by mistake brought in the county court, and the amount claimed being beyond the jurisdiction. The defendant opposed the motion, citing *Meyers v. Baker*, 26 U. C. R. 16, and *O'Brien v. Welsh*, 28 U. C. R. 394. Falconbridge, J., said that he was bound by the cases cited to hold that he could not remove an action which was *coram non judice* where it was brought, and that the statutory provisions enacted since those decisions (see R. S. O. c. 44, s-s., 96-100, 158; c. 47, s-s. 23-25) did not alter the law laid down. Motion refused with costs to the defendant in any event. *Ferguson v. Sampey*, 10 C. L. T. 110. See *re McGugan v. McGugan*, 21 O. R. 295, *infra*, note to sec. 38. See also 54 V. c. 14, *infra*, p. 68.

24. Except in cases within the meaning of the preceding section, no cause or action instituted in a county court shall be removed or removable from such county court, by writ of *certiorari*, or otherwise, into the high court unless the debt or damages claimed amount to upwards of \$100, and then only on affidavit and by leave of a judge of the high court, in cases which appear to the judge fit to be tried in the high court, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he thinks fit. R. S. O. 1877, c. 43, s. 25.

25. In a case removed from the county court to the high court by a writ of *certiorari*, it shall not be necessary to deliver a new statement of claim, but the case shall proceed on the record as it stands when removed into the high court, and all subsequent proceedings may be had and taken in the cause in the same way as if it had been

originally commenced and prosecuted in the high court. R. S. O. 1877, c. 43, s. 26.

Section 158 of the Judicature Act contains the following provisions as to transferring cases from county and division courts to the high court :

158. In cases before any county or division court where the defence or counter claim of the defendant involves matter beyond the jurisdiction of the court, the high court or any division or judge thereof, may on the application of any party to the proceeding, order that the whole proceeding be transferred from such court to the high court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the clerk or other proper officer, of the county or division court to the said high court; and the same shall thenceforth be continued and prosecuted in the said high court as if it had been originally commenced therein. 44 V. c. 5, s. 78.

The following amendment was made to the law as to transfer of actions from the county court, by 54 V. c. 14 :—

An Act for the removal of certain cases from a County Court to the High Court.

WHEREAS, under a misapprehension of law, actions are sometimes brought in a county court which are not within the jurisdiction of the said court, and it is expedient for the relief of suitors to provide as hereinafter mentioned ;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows ;

1. Where it appears at any stage of an action brought in a county court that such court has not cognizance thereof from any cause, a judge of the high court, or the judge of the county court before whom the action is pending, may order the action to be transferred to the high court, and the proceedings thenceforward shall be as provided by sections 23, 25 and 38 of " The County Courts Act " for like cases.

This is more comprehensive than either s. 23 or s. 38.

An action was brought in a county court to recover the amount of a broker's commission on the sale of land. The defendant disputed his liability, and the action was tried by a jury, who found that the plaintiff was entitled to recover \$250. The amount was not ascertained otherwise than by the agreement of the parties, as found by the jury. Held, by Rose, J., that the amount was not ascertained within the meaning of R. S. O. c. 47, s. 19, s-s. 2, and the county court had no jurisdiction. *Robb v. Murray*, 16 A. R. 503, followed. Held, by a divisional court, that the above Act, which was passed after the determination that the county court had no jurisdiction, was retrospective, and enabled the action to be transferred to the high court. *Re McKay v. Martin*, 21 O. R. 104. See also *Whiddon v. Jackson*, *supra* p. 45.

NOTE—Subsequently judgment was given in this case, with costs up to time of application for transfer, on county court scale, and subsequent thereto, on high court scale (*Globe*, Nov. 17th, 1891). See s. 39, *infra*.

PLEADING AND PRACTICE.

26. An action by or against a judge or junior judge of a county court which is within the competence of a county court, may be brought in the county court of any county adjoining that in which such judge or junior judge resides. R. S. O. 1877, c. 43, s. 27.

Held, that the fact of a defendant being a county judge, where the plaintiff might otherwise have proceeded under the Overholding Tenants Act of 1898, and thereby have obtained a more summary remedy, is a sufficient reason to change the place of trial in an action of ejectment. *Anonymous*, 4 P. R. 310.

Quere, whether the circumstances of defendant being a county judge is not in itself sufficient to give plaintiff the right to have the place of trial changed on grounds of public policy. *Ibid*.

27. When it is intended by a pleading to bring into question the title to land, or to any annual or other rent, duty, or other custom or thing, relating to or issuing out of lands or tenements, it shall be so expressly stated in the pleading, nor shall such pleading be received by a county court without an affidavit thereto

annexed that the same is not pleaded vexatiously, nor for the mere purpose of excluding the court from jurisdiction, but that the same contains matter which the deponent believes to be necessary for the party pleading to enable him to go into the merits of his case. R. S. O. 1877, c. 43, s. 28; 50 V. c. 8, Sched.

A plea was pleaded bringing title to land in question, and after a verdict for the plaintiff a new trial was granted, on the ground that the court had no jurisdiction. On appeal, the judgment was reversed, as the court having no jurisdiction could not grant a new trial. The absence of the affidavit required by the statute with such plea will not warrant the court in proceeding, but would be ground for setting aside the plea. *Campbell v. Davidson*, 19 Q. B. 222.

28. Subject to the provisions of "The Judicature Act" and to rules of court, the pleadings, practice and procedure for the time being of the high court shall apply and extend to the county courts, wherever the pleadings, practice and procedure of the county courts corresponded with those of the superior courts of law, prior to the passing of "The Ontario Judicature Act," 1881. 44 V. c. 5, Rule 490.

The following Con. Rules apply exclusively to county courts :—

1257. The pleadings, practice and procedure in actions in the high court of justice shall apply and extend to actions in the county courts. J. A. Rule 490.

There is no corresponding Rule in England, as the county court pleading, practice and procedure there are almost similar to those of our division courts.

This Rule has been slightly altered from the original Rule 490, which limited the application of the procedure of the high court to cases where "the present pleadings, practice and procedure of the county courts correspond with those of the superior courts of law." Doubts were therefore formerly entertained as to the applicability of some of these Rules. See *McConnell v. Williams*, 13 A. R. 438; *Williams v. Crow*, 10 A. R. 301; *Ferguson v. McMartin*, 11 A. R. 731,

infra, note to section 41. The original wording of this Rule has, however, been retained in the above section.

1260. In all actions brought in a county court the judge of the county court where the proceedings are commenced, or the master in chambers, or one of the judges of the high court sitting at chambers may change the place of trial according to the practice now in force in the high court; and in the event of an order being obtained for that purpose, the clerk of the county court where the action was commenced shall forthwith transmit all papers in the action to the clerk of the county court to which the place of trial is changed, and all subsequent proceedings shall be entitled in such last mentioned court, and carried on in such last mentioned county as if the proceedings had originally been commenced in such last mentioned court. R. S. O. 1877, c. 50, s. 155.

The words "or the master in chambers" were inserted in the consolidating of the Rules, in consequence of a doubt expressed as to his jurisdiction in *Brigham v. McKenzie*, 10 P. R. 406.

Upon motion to change the venue from Toronto to Napanee in a county court action, brought to recover \$100 damages for breach of a contract by the defendant to sell a horse to the plaintiff, it appeared that the defendant resided in the County of Lennox and Addington and the plaintiff in Toronto, and that all the witnesses on both sides resided in Lennox and Addington except the plaintiff himself and one other in Toronto. The defendant swore that he required eleven witnesses at the trial. It was not clear where the cause of action arose, but the breach was probably where the defendant resided. The master in chambers refused to change the venue. Held, by Rose, J., in chambers, that there was a very great preponderance of convenience in favour of having the action tried at Napanee, and the venue was accordingly changed; held, also, by Rose, J., that an appeal lay to a judge in chambers from an order of the master in chambers under Rule 1260. Held, by the divisional court, upon appeal, that the venue was properly changed to Napanee; and that, even if an appeal did not lie from the master in chambers to a judge in chambers, the latter had the right as upon a substantive application to make the order which the master refused. As the appeal to the divisional court was dismissed upon the merits, no opinion was expressed as to whether such appeal lay. *Milligan v. Sills*, 13 P. R. 350.

No appeal would lie from the decision of a county judge to the court of appeal under this Rule, as such a decision would be an interlocutory one; (see sec. 42); but *quere* as to a "substantive motion" to the master in chambers or a high court judge in chambers, on the dismissal of a motion by the county judge.

1262. Money to be paid into the county court, or surrogate court of any county by any person, shall be paid into some incorporated bank designated for this purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited, and which has been appointed for this purpose by any general rule or order made in the same manner as other general rules or orders of the said courts respectively are by law directed to be made; or if no bank has been so appointed, then into any bank in which public money of the Province is then being deposited.

(2) The money shall be so paid in to the credit of the cause or matter in which the payment is made, with the privity of the clerk or registrar (as the case may be) of the court, and in no other manner; and such money shall only be withdrawn on the order of the court or a judge thereof, with the privity of the clerk or registrar of the court.

(3) Where money is so paid in under a plea of payment into court, the clerk, on the production of the receipt of the bank for the money or other satisfactory proof of such payment, shall sign a receipt for the amount in the margin of the pleading.

This Rule was amended by Rule 1267, passed on 13th June, 1890, by striking out the words "County of York" and substituting therefor the words "any county."

1263. The clerk and registrar of said courts shall each keep a book or books containing an account of all moneys so paid into their respective courts, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all moneys so paid in and withdrawn respectively, and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, and shall transmit to the Provincial Secretary and to the judge or each of the judges of such courts, a copy of such statement, with a declaration thereto annexed made before a justice of the peace or

commissioner for taking affidavits, in the form No. 217 in the appendix.

1264. The book or books so to be kept shall be open for inspection within office hours; and the clerk or registrar shall give a certificate of the state of any account or an extract therefrom at the desire of any party interested, or his attorney or solicitor on payment to the clerk or registrar of the sum of twenty cents for such inspection or certificate and the sum of ten cents per folio for such extract. R. S. O. 1877, c. 42, s. 25.

29. The several county courts may set aside verdicts or non-suits, and grant new trials, and such courts and the judges thereof may set aside judgments by default, and proceedings for irregularity, grant time for any pleading, and order stay of proceedings till security is given for costs, and may issue summonses and make orders in all matters of practice in like manner and on the like principles and grounds, and to the same extent as in the high court, or by the judges thereof in the said court, and may cause rules on sheriffs, or any other rules, orders or proceedings thereupon to be served in any county. R. S. O. 1877, c. 43, s. 30.

At the trial the jury answered all the questions left to them in favour of the plaintiff and judgment was entered for him, which the county court judge subsequently set aside and entered judgment for the defendants. Held, that under Rule 490, O. J. Act, the same power is extended to the county court as is possessed by the high court under Rule 321, and that the judge of the county court was right in giving judgment in favour of the defendants, instead of submitting the question to another jury. See also, on the same point, *Stewart v. Rounds*, 7 A. R. 575, and *Williams v. Crow*, 10 A. R. 301. *McConnell v. Wilkins*, 13 A. R. 438. See *Ferguson v. McMartin*, 11 A. R. 731, *infra* note to sec. 41.

COSTS.

30. In all actions or other proceedings brought in a county court in which the plaintiff fails to recover judgment by reason of such court having no jurisdiction over the subject matter thereof, the county court shall have jurisdiction over the costs of the action, or other proceeding, and may order by and to whom the same shall be paid, and the recovery of the costs so ordered to be paid may be enforced by the same remedies as the costs in actions or proceedings within the proper competence of the said courts are recoverable. 44 V. c. 5, Rule 489.

Con. Rule 1256 is almost a literal transcription of this section.

Prior to this enactment, no costs could be recovered by the defendant where the plaintiff failed for want of jurisdiction: *Powley v. Whitehead*, 16 Q. B. 589.

EXECUTION.

31. The county courts may issue writs of execution against goods and against lands, and writs of *capias ad satisfaciendum* against the person, in like cases, upon the same terms, and in the same order, as similar writs may be issued in the high court. R. S. O. 1877, c. 43, s. 31.

32. The county courts may issue writs of execution against the person, lands or goods, writs of subpœna, rules on the sheriff, and all other rules, orders and proceedings into any other county, to be served or executed therein; and judge's sum-

mons and orders may be issued in like manner ; and all such writs, rules, summonses, orders and proceedings shall be of equal force and effect, and as binding as if the same had been issued from the court or by the judge of the county to or into which they are so issued, and all subsequent proceedings thereupon shall be carried on in the court in which the action has been brought or the judgment entered. R. S. O. 1877, c. 43, s. 32.

The following are the sections of the Division Courts Act respecting transcripts of judgment from that court to the county court :—

223. In case an execution is returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of \$40, the plaintiff or defendant may obtain a transcript of the judgment from the clerk, under his hand and sealed with the seal of the court which transcript shall set forth :

1. The proceedings in the cause ;
 2. The date of issuing execution against goods and chattels ;
- and
3. The bailiff's return of *nulla bona* thereon, as to the whole or a part. R. S. O. 1877, c. 47, s. 165.

224. Upon filing the transcript in the office of the clerk of the county court, in the county where the judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, the same shall become a judgment of the county court, and the clerk of the county court shall file the transcript on the day he receives the same, and enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain,

1. The names of the plaintiff and defendant ;
2. The amount of the judgment ;

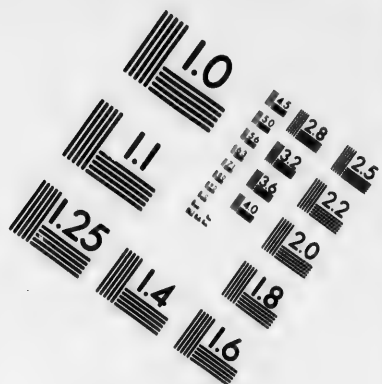
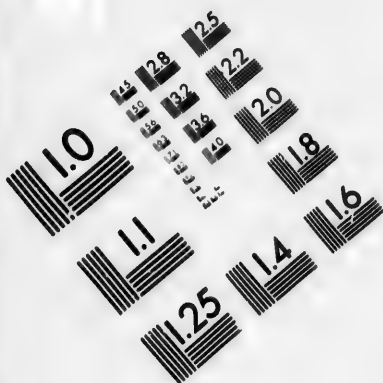
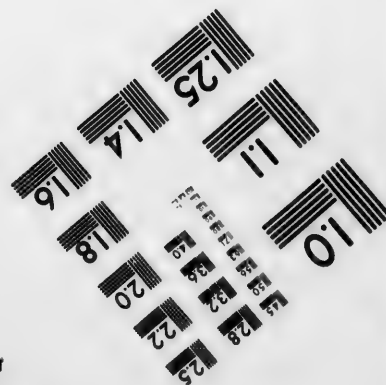
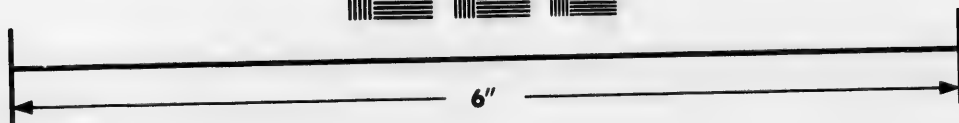
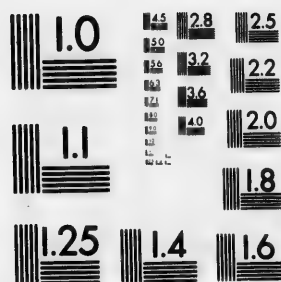


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3. The amount remaining unsatisfied thereon ; and

4. The date or filing ;

for which services the clerk of the county court shall be entitled to demand and receive from the person filing the same the sum of fifty cents. R. S. O. 1877, c. 47, s. 166.

225. Such book shall at all reasonable hours be accessible to any person desirous of examining the same, upon the payment to the clerk ten cents. R. S. O. 1877, c. 47, s. 167.

226. Upon such filing and entry the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof or of the balance due thereon, as if the judgment had been originally obtained in the county court. R. S. O. 1877, c. 47, s. 168.

The plaintiffs recovered judgment in the division court and issued an execution thereon under which nothing was made, and which expired by lapse of time. At the request of the plaintiff's solicitor the bailiff returned the writ *nulla bona*, although it was alleged that there were goods out of which the debt might have been levied. Upon this return the plaintiffs procured a transcript of their division court judgment in regular form and filed the same in the office of the clerk of the county court and sued out a writ of *fi. fa.* goods in order to obtain the benefit of the provisions of the Creditors' Relief Act.

The respondent S., the holder of a warrant of execution in the division court, then moved to set aside the plaintiffs' proceedings and they were accordingly set aside by the county court judge on the ground that the judgment in the court was void, being founded on a return to an expired execution. Held, that a return of *nulla bona* where there were goods, was no more than an irregularity to be complained of by the defendant. *Ontario Bank v. Kirby*, 16 C. P. 35, followed. Nor could a third party object that such a return was made at the instance of the solicitor of the plaintiffs. Held, also (reversing the judgment of the county court), that a return of *nulla bona* could be properly made after the expiration of the writ and that the transcript and judgment in the county court founded thereon were valid and regular. *Molsons Bank v. McMeekin*, 15 A. R. 535.

POWER TO ENFORCE RULES.

33. The several county courts shall have and exercise the same powers to enforce their rules, regulations and directions as the high court

possesses, and may punish by fine or imprisonment, or by both, for any wilful contempt or resistance to their process, rules or orders; but the fine shall in no case exceed \$100, nor shall the imprisonment exceed six months. R. S. O. 1877, c. 43, s. 33.

See as to form of warrant of imprisonment for contempt and right of appeal; *Reg. v. Jordan*, W. N. 1888, 152.

A judge of a county court, acting under the authority of 48 V. c. 26, s. 6 (Ont.) removed an assignee for creditors and substituted another assignee. The first assignee, as alleged, refused to deliver over the keys of the place of business of the insolvent to the second assignee, and the judge made an order for the issue of a writ of attachment against the first assignee for contempt. Held, that the judge, in acting under the statute, was not exercising the powers of the county court, but an independent statutory jurisdiction as *per sona designata*, and had therefore no power to direct the issue of a writ of attachment; and prohibition was ordered. *Re Paquette*, 11 P. R. 463.

ACCOUNTS AND INQUIRIES.

34. Where, in the opinion of the court or a judge, it is necessary or proper in an action to take accounts or make inquiries, which cannot conveniently or properly be taken by the means available in the court, the court or judge may order the accounts and inquiries to be taken and made by the master in ordinary of the supreme court or any of the local masters. R. S. O. 1877, c. 49, s. 26.

35. Where an order is made under the preceding section, the master to whom the reference is directed shall proceed therein, and all rules as to the powers of the master, and as

to the proceedings in the master's office, shall apply thereto. R. S. O. 1877, c. 49, s. 27.

Con. Rules 43 to 88 contain the provisions as to such references.

36. Where the master has made his report pursuant to the order, the same shall be filed with the officer of the court with whom the pleadings are filed; and the report shall, without an order confirming the same, become absolute at the expiration of fourteen days after the filing thereof, unless previously appealed from, but the court or a judge may, under special circumstances, allow an appeal after the fourteen days. R. S. O. 1877, c. 49, s. 28.

37. The appeal from a report referred to in the preceding section shall be to a judge in chambers or to the court; but when the appeal is taken to the court, the notice of appeal shall be returnable not later than the fourth day of the county court sittings next after the filing of the report. R. S. O. 1877, c. 49, s. 29.

TRANSFERRING CASES TO THE HIGH COURT.

38. (1) If it appears to a county court or a judge thereof that an equitable question raised in an action or other proceeding in such county court, cannot be dealt with by the county court so as to do complete justice between the parties, or may for any other reason be more conveniently dealt with in the high court, the court or judge may order the action or proceeding to be transferred to the

high court; and the order of transference may be made by the court or judge *sua sponte*, or upon the application of either party on notice to the other parties interested, and may be made at any stage of the action or other proceeding. R. S. O. 1877, c. 49, s. 23.

(2) Where an order is made under the preceding sub-section, the proper officer of the county court shall annex together all pleadings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such officer of the high court as the order directs. R. S. O. 1877, c. 49, s. 24.

(3) Where a transfer has been made under this section the action or other proceeding shall thereafter proceed in the division of the high court to which it has been transferred; and the judges of the high court and the officers thereof shall have the same powers and perform the same duties in relation thereto, and the rules and practice of the supreme court shall in all respects (or as nearly as may be) apply as if the suit had been originally instituted as an action, or proceeding in the high court; but no further or other pleadings shall be necessary than the original pleadings in the court from which the action or proceeding was transferred, unless specially ordered by the court or a judge. R. S. O. 1877, c. 49, s. 25.

See also 54 V. c. 14, *supra*, p. 68, as to transfer of actions.

Since 32 V. c. 6, s. 4, the county courts have had common law jurisdiction only; the Judicature Act did not alter the jurisdiction of those courts,

but only made applicable to matters cognizable by them the several rules of law thereby enacted and declared.

An action by a ratepayer of a school section, on behalf of himself and all other ratepayers, against trustees of the section, seeking to compel the defendants to pay to the treasurer of the section such amount as might be disallowed upon taxation of a bill of costs paid by the trustees to a solicitor, is one of purely equitable jurisdiction, and is not cognizable by a county court, even though the amount in question is not more than \$200.

The term "personal actions," used in R. S. O. c. 47, s. 19, means common law actions.

If a county court has no jurisdiction over the plaintiff's cause of action, the proceedings in respect thereof in that court are all *coram non judice*, and the judge of that court has no power over them; section 38 of R. S. O. c. 47 applies only where the action in which the equitable question is raised is within the jurisdiction of the county court.

Prohibition granted to restrain a judge from transferring to the high court an action brought in a county court for an equitable cause of action. *Re McGugan v. McGugan*, 21 O. R. 295.

This decision, although only recently reported, was rendered on 31st Dec., 1890, before the passing of 54 V. c. 14, otherwise an order would no doubt have been made, as in *McKay v. Martin*, 21 O. R. 104, *supra*, p. 69, transferring the action to the high court.

COSTS OF TRANSFERS AND REFERENCES.

39. Where an action is transferred under section 38, or a reference is directed under section 34, the fees and disbursements shall be paid and the solicitors' costs taxed according to the scale of fees applicable in actions, which before the passing of "The Ontario Judicature Act," 1881, and "The Law Reform Act," 1868, might have been brought under the equity jurisdiction of the county court. R. S. O. 1877, c. 49, s. 30.

See notes to *Whiddon v. Jackson* and *re McKay v. Martin*, *supra*, pp. 45 and 69.

APPEAL FROM COUNTY COURTS.

40. The terms "party to a cause," and "appellant," hereinafter used, shall include persons suing

or being sued in the name of others, though not mentioned in the record, and persons on whose behalf or for whose benefit any action is prosecuted or defended, as well as parties named in the record. R. S. O. 1877, c. 43, s. 34.

Under C. S. U. C. c. 15, an appeal lay from the county court to one of the superior courts. These courts refused to entertain an appeal where the decision turned wholly on the evidence and involved no points of law. *Fowler v. McDonald*, 3 Q. B. 385; *Bradley v. Crane*, 4 Q. B. 122; *Manning v. Ashall*, 23 Q. B. 302; *Clark v. Hurlburt*, 6 C. P. 438; *McKinstry v. Furby*, 24 Q. B. 176; *Harris v. Robinson*, 25 Q. B. 247. The following cases were decided under the old statute :—

Appeals will not be heard unless the grounds are entered on the appeal books when delivered. *Eddy v. Ottawa City Passenger Railway Company*, 31 Q. B. 569.

An appeal will lie upon an interpleader. *Feehan v. Bank of Toronto*, 10 C. P. 32.

Where defendants moved for a nonsuit on leave reserved, or for a new trial, and the rule was made absolute for a new trial, on payment of costs; held, that they might appeal from this decision as refusing the nonsuit, and need not first take out the rule absolute as granted. *Penton v. Grand Trunk Railway Co.*, 28 Q. B. 344.

After the evidence had been taken, a verdict was entered by consent for plaintiff, subject to the opinion of the court upon the whole case, with power to reduce the verdict. Held, that there was no right to appeal. *McColl v. Waddell*, 19 C. P. 213.

A county court judge having refused to certify the papers for appeal, because the bond was not conditioned to abide by the decision of the court above, as the statute requires, this court refused to interfere. In *re Keenahan v. Preston*, 21 Q. B. 461.

The condition of the bond not being in accordance with the statutes, the appeal entered for argument was struck out of the paper. *Pentland v. Heath*, 24 Q. B. 464.

The court will not entertain an appeal from the court below upon the question whether plaintiff or defendant was entitled first to address the jury. *Hastings v. Earnest*, 7 Q. B. 520.

Where, in a case of collision, the judge reported that he thought he had not sufficiently directed the jury as to the rule laid down in *Tuff v. Warman*, 5 C. B. N. S. 573, as to the effect of negligence on the plaintiff's part, and that he had therefore granted a new trial, this court on appeal refused to interfere. *Somers v. Livingston*, 24 Q. B. 64.

Where an action for not repairing the road, in which the venue is local, had been brought in the county court of a county different from that in which the

road was situate, and a verdict for the plaintiff confirmed in term, this court allowed the appeal from such judgment, but made no order, as the court below, having no jurisdiction, could not be ordered to do anything in the case. *Ferguson v. Corporation of Howick*, 25 Q. B. 547.

Defendant in the county court obtained a rule nisi to enter a nonsuit, with stay of proceedings; it was not signed by the clerk, but had at the side the words, "Rule nisi granted; W. Salmon, judge." Plaintiff's attorney, treating it as no rule, signed judgment, but the judge held it to be a proper rule and the judgment a nullity, and ordered a nonsuit. On appeal by the plaintiff; held, that the judgment was irregular only, and should therefore have been got rid of before any other step could be taken, and on this ground the appeal was allowed. *Brown v. Cline*, 27 Q. B. 87.

This court will not entertain objections to the hearing of county court appeals unless such objections appear or should properly appear upon the proceedings certified. They refused therefore to strike out an appeal entered, for objections to the form and amount of the bond, and to the sufficiency of the sureties and the affidavits of justification. *Penton v. The Grand Trunk Railway Co.*, 28 Q. B. 367.

The grounds of appeal must be stated in the appeal books, independently of the objections set out in the rule nisi below. *Severn v. Street Railway Co.; Corbett v. Taylor*, 23 Q. B. 254.

Where exhibits used in the court below are not produced in the appellate court, the appeal will not be heard, if the attention of the court be called to the fact. *Morse v. Thompson*, 19 C. P. 94.

41. Any party to an action in a county court may,

1. Appeal to the court of appeal from a judgment directed by a judge of the county court, at or after the trial in a case tried by him without a jury, or in which he directs judgment at or after the trial upon the special findings of the jury in a case tried with a jury, or,

2. Instead of appealing to the court of appeal, either party may, in cases tried by a judge, move before the county court, within the first two days of its next quarterly sittings, for a new trial, or to set aside the judgment on any ground except that

upon the evidence given, the judgment so directed, is wrong in law.

3. In cases tried with a jury instead of appealing to the court of appeal, a similar motion may be made before the county court for a new trial, or to set aside the judgment directed to be entered upon the special findings of the jury upon any ground except that the judgment so directed to be entered is wrong in law.

4. Either party may appeal to the court of appeal from the judgment of the county court, upon applications, under sub-sections 2 and 3.

5. Where a party is entitled to move before the county court under sub-sections 2 and 3, he may move before the said court upon all grounds which would be open to him if he were appealing to the court of appeal. 48 V. c. 13, s. 23 (1); 50 V. c. 7, s. 30.

Although the jurisdiction of the court of appeal is not limited in appeals from the county court as it is in appeals from the superior courts, under s. 18, s-s., 3 of the Appeal Act, it will not in ordinary cases interfere where a new trial has been refused by the county court upon a matter of discretion only, *Campbell v. Prince*, 5 A. R. 330.

In this case, however, being an action for assault against a public officer, in which the jury had found a verdict for \$100, and a new trial asked for on the ground that the verdict was against evidence, was refused, the court of appeal granted a new trial, as the evidence strongly preponderated in the defendant's favour and there was reason to believe the jury had been misled by the charge. As the judgment was varied in a matter of discretion no costs were given. *Ibid.*

The verdict herein was set aside by the county court, and a non-suit entered upon a ground not taken as a defence at the trial or in the rule nisi. Held, reversing the judgment, that the learned judge erred in giving effect to the objection, which, if taken at the trial, would have been met with an amendment. As the evidence shewed that the plaintiff was entitled to succeed upon

the merits, the appeal was allowed, and the rule in the court below discharged. *Clarke, et al. v. Barron*, 6 A. R. 309.

The court, having no power on an appeal from the county court to amend the record, allowed the appeal on payment of costs by the appellant, so far as to direct the issue of a rule nisi, upon the return of which in the court below, the necessary amendment could be made. *Wilson v. Brown, et al.*, 6 A. R. 411.

This case had been remitted to the court below, this court being of opinion that the record should be there amended and a verdict entered for the plaintiff against the defendant B. alone. The learned judge of the county court, instead of entering such a verdict directed a new trial, the parties to apply to amend their pleadings as they might be advised, so that B. might raise any defence which he was not obliged to raise in the action on the joint liability. Held, that the direction of the learned judge of the county court as to the way in which he thought it most just to the defendant B. that the application to amend should be made, was an exercise of his discretion with which this court would not interfere. S. C. 7 A. R. 181.

In an action of replevin the defendant, for a second plea, avowed for board due by plaintiff to him as a boarding-house keeper; and for a third, avowed for a lien on the goods of plaintiff under R. S. O. c. 147, s. 2. On the trial before the judge of the county court without a jury, the evidence as to whether the defendant was the keeper of a boarding-house was contradictory, but the learned judge decided in favour of the plaintiff, holding that the defendant was not a boarding-house keeper. On appeal this finding of the county court judge was affirmed, although, had the matter come before this court in the first instance, it would have decided otherwise, and under the circumstances, no costs of the appeal were given to the respondent. *Rees v. McKeown*, 7 A. R. 521.

Where a case in the county court has been tried with a jury, the only appeal given by R. S. O. c. 47, s. 41, direct to the court of appeal from the judgment at the trial is when such judgment is directed to be entered upon special findings of the jury, and it is complained of as being wrong in law upon such findings. Any other appeal raising an objection to the conduct of the proceedings at the trial on a motion for a non-suit or the reception or rejection of evidence on the charge to the jury, must be brought from the decision of the judge upon a subsequent motion for a new trial. The general language of s. 42 does not apply when the case is one coming within s. 41. *Weaver v. Sawyer*, 16 A. R. 422.

A party may move before the judge in court against the verdict or judgment at the trial, either *before* or during the first two days of the next quarterly sittings after the trial, and the judge may entertain the motion. *Smith v. Rooney*, 12 Q. B. 661, is now inapplicable. Scope of sub-section 5 observed on. *Norton v. McCabe*, 12 P. R. 506.

The judge, at the trial in the county court, entered a verdict for the plaintiff, instead of directing judgment to be entered, and afterwards refused a rule nisi to set aside such verdict. Rule 405 of the Ontario Judicature Act in effect forbids the granting of any rule to shew cause where the application is against

the judgment of a judge who tries a cause without a jury. *Quere*, as to the application of this rule to county courts by Rule 490; but, held, (per Patterson, J.A.), that the entry of the verdict might be treated as a direction to enter judgment, and was a decision from which an appeal would lie under Rule 510. *Williams v. Crow*, 10 A. R. 301.

An action in the County Court of Carleton was tried without a jury by the junior judge of that county, who, after consideration, entered a verdict for the defendant. A court composed of the senior and junior judges of Carleton, and the judge of the County Court of Prescott and Russell, subsequently (sitting in term, under the Grouping Act), assumed to set aside the verdict, and to enter judgment for the plaintiff, *dissentiente* the junior judge of Carleton. Held, that the judgment of a court so constituted was invalid, and that the verdict at the trial was not affected thereby. Per Patterson, J.A., the verdict at the trial was a final judgment of the court, and could not be attacked except by an appeal to this court. Rule 510, Ontario Judicature Act, gives a party no right to move in the county court. Per Osler, J.A., the party dissatisfied with the judgment at the trial may, under Rule 510, Ontario Judicature Act, move against it before the judge himself; and an appeal to this court may, under 45 V. c. 6, s. 4, as properly be brought from the decision on such motion as from the judgment at the trial. *Ferguson v. McMartin*, 11 A. R. 731.

Where the county court judge granted a new trial owing to his dissatisfaction with the verdict, the court refused to interfere with his discretion, as it did not appear that he was clearly wrong. *Hunter v. Vanstone*, 6 A. R. 337.

42. An appeal shall also lie to the court of appeal at the instance of any party to a cause or matter, from every decision made by a judge of a county court under any of the powers conferred upon him by any rules of court or any statute, unless provision is therein made to the contrary; and from every decision or order made by the judge of a county court sitting in chambers under the provisions of the law relating to the examination of debtors, attachment of debts and proceedings against garnishees; and from every decision or order made in any cause or matter disposing of any right or claim, provided always that the decision or order is in its nature *final* and not merely *interlocutory*. 45 V. c. 6, s. 4.

See Con. Rules 926 to 948 inclusive, as to powers of county judges in matters relating to examination of debtors, attachment of debts and proceedings against garnishees.

Prior to 45 V. c. 6, there could be no appeal in garnishee proceedings: *Sator v. Hubbard*, 6 A. R. 546; nor from a decision in a case by consent without pleadings: *Harding v. Knowlson*, 17 Q. B. 564; nor when a verdict was entered by consent, subject to the opinion of the judge upon the law and facts: *McColl v. Waddell*, 19 C. P. 213.

Where a verdict is taken for plaintiff, with leave to move to enter a verdict for defendants, an appeal will lie from the decision on such motion. *Haworth v. Fletcher*, 20 Q. B. 278.

The "right or claim" mentioned in this section is that which forms the subject of the action, not the right to take any particular step in the course of the action; and an order made in chambers in a county court action striking out a jury notice is not an order finally disposing of a right or claim within the meaning of the section, but it is in its nature an interlocutory order, and not appealable. *McIherson v. Wilson*, 13 P. R. 339.

A "final order" is one made on such an application or proceeding, that, for which ever side the decision is given, it will if it stands, finally determine the matter in litigation. *Salaman v. Warner*, 1891, 1 Q. B. 734; following *Standard Discount Co. v. La Grange*, 3 C. P. D. 67, at p. 71.

An order for leave to sign judgment under Rule 739, is in its nature, final and not merely interlocutory, and is therefore appealable under this section: *Bank of Minnesota v. Page*, 14 A. R. 347.

43. An appeal may be had from any appealable decision of a county court judge, notwithstanding judgment has been signed thereon; provided that the required security be given within the time limited by the judge under section 46; and in every case the allowance of the bond by the judge shall operate as a stay of execution, unless the judge shall otherwise direct. 45 V. c. 6, s. 5, *part*.

Prior to 45 V. c. 6, there could be no appeal after judgment was entered: *Murphy v. Northern Ry. Co.*, 13 C. P. 32; *Duffell v. Dickinson*, 14 C. P. 142; *Wood v. G. T. Ry.*, 16 C. P. 275.

It is erroneously stated in "*Holmsted & Langton*" at page 687, that "there appears to be no provision in the rules or statutes, which makes the perfecting of security *ipso facto* a stay of proceedings pending the appeal," in county court cases; but the latter portion of the above section expressly provides that it shall so operate.

44. In any appeal in a case where judgment has been signed, and the decision appealed against is reversed, the court of appeal shall have authority to set aside the judgment, and make any other order as to them shall appear requisite and just. 45 V. c. 6, s. 5, *part*.

Con. Rules 1258 and 1259, are at follows :—

1258. In actions in the county courts, motions against judgments and for new trials shall be disposed of upon the like grounds and principles as in the high court. See R. S. O. 1877, c. 50, s. 292.

1259. Every motion against a judgment or for a new trial shall be a two clear days' notice, and the motion shall be set down at least one clear day before the first day of the sittings for which the notice is given unless otherwise ordered. See R. S. O. 1877, c. 50, s. 293.

45. The judge shall only be required under section 51 of this Act, in appeals under section 42, to certify the motions, rules, orders, affidavits, evidence and other materials, necessary for the full understanding of the matter in appeal, together with his judgment or decision on the same. 45 V. c. 6, s. 6.

It is the duty of a county court judge to certify to the court above on an appeal the grounds of his decision. The statute is not complied with by certifying the decision simply. *Hayward v. Grand Trunk Railway Co.*, 32 Q. B. 392.

46. Any judge of the county court appealed from, on the application of the appellant, his counsel or solicitor, shall stay the proceedings in the cause for a time or times not exceeding thirty days in all, in order to afford the party time to give the security

hereafter required to enable him to appeal. R. S. O. 1877, c. 43, s. 36; 45 V. c. 6, s. 5.

The time for appealing is apparently not limited, otherwise than by this section, and the following Con. Rule :—

886. An appeal shall be set down to be heard at the first sittings of the court for the hearing of arguments which commences after the expiration of 30 days from the decision complained of. App. O. 40.

Sunday is not reckoned in the 30 days, where it is the first day: *Cooper v. Dixon*, 3 C. L. T. 198; nor where it is the last day: see Rule 476.

47. The appellant shall give or cause to be given to the opposite party security, either—

1. By a bond executed by two persons, whether named as sureties or parties interested or otherwise, in the sum of \$200 or such lesser sum as the judge of the court appealed from may direct, conditioned that the appellant shall abide by the decision of the cause by the court of appeal, and pay all sums of money and costs, as well of the action as of the appeal, awarded and taxed to the opposite party; or

2. By paying into the court appealed from, in the manner provided by law, within the time herein limited for the perfecting of an appeal bond, the sum of \$100.00, or such lesser sum as the judge may direct. 53 V. c. 16, s. 1.

This section was substituted for section 47 of the Revised Statute, which did not limit the amount of the bond or deposit in court, but left it wholly in the discretion of the judge.

On the 18th of January proceedings were stayed for four days to allow defendants to give a bond for appeal, which was to be taken for \$600. On the 18th the bond was filed, the proper penalty being inserted in the obligation, but in the recital of the judge's order this sum was left blank. The judge

pointed out the omission to defendant's attorney, who inserted the sum, but the judge afterwards required him to get the bond re-acknowledged, and he procured it from the clerk of the court for that purpose. The plaintiff's attorney finding it gone gave notice of taxation; but it was returned before judgment, which was nevertheless entered, and upheld on the ground that the bond when first filed was defective, and that it had not been refiled with an affidavit of execution after being corrected. The judge afterwards refused to transmit the papers for appeal, and to a *mandamus nisi* returned the above facts. Held, that the bond was sufficient when first filed, the omission being immaterial; that the sum might have been inserted without re-execution, and that it was therefore unnecessary to file any new affidavit. *Regina v. Wells*, 17 Q. B. 545.

48. In case of security being given by bond, the parties executing the same shall justify to the amount of the penalty of the bond by affidavit annexed thereto, in like manner as bail are required to justify. R. S. O. 1877, c. 43, s. 38.

The affidavits of justification and execution should both be entitled in the cause.

49. The bond and affidavit of justification, and an affidavit of the due execution of the bond, shall be produced to the judge, to be approved of by him; and upon being approved of shall be filed in the office of the court appealed from, until the opinion of the court of appeal has been given, and shall then be delivered to the successful party. R. S. O. 1877, c. 43, s. 39.

When the judge refuses to certify the proceedings on the ground of the insufficiency of the bond, the question of its sufficiency may be tested by an application for a *mandamus* to compel him to certify: *Reg. v. Wells*, 17 Q. B. 545; *re Keenahan v. Preston*, 21 Q. B. 461 (*supra*).

When the judge has allowed the bond and certified the proceedings, the court of appeal will not refuse to hear the appeal or entertain an application to strike it out on objections to the form or amount of the bond, or the sufficiency of the sureties, or on the ground that it was not filed in time; *Penton v. G. T. Ry.* 28 Q. B. 367; *McLellan v. McLellan*, 2 C. L. J. 297; *Haworth v. Fletcher*, 20 Q. B. 278.

50. In case security is given by deposit of a sum of money in court, such sum shall remain in court as security for the payment of all sums of money and costs, as well of the action as of the appeal, awarded and taxed to the opposite party. R. S. O. 1877, c. 43, s. 40.

The appeal bond, conditioned as prescribed by the statute, is security both for the costs of appeal and also for the costs below. *Waddell v. Robertson*, 26 Q. B. 376.

51. Upon the bond being so approved, or the deposit being paid into court, the judge shall, at the request of the appellant, certify under his hand to the court of appeal the pleadings in the cause, and all motions, rules or orders made, granted or refused therein, together with the judge's charge and the judgment or decision on the same, and, where a trial has been had, the evidence and all objections and exceptions thereto, and all other papers in the cause affecting the questions raised by the appeal. R. S. O. 1877, c. 43, s. 41.

See section 45.

Con. Rule 835 is as follows :—

835. For the purpose of avoiding unnecessary expense in appeals from the county courts—particularly in making copies of papers—it is ordered that the pleadings, motions, orders, and other papers certified to the court of appeal under section 51 of the Act respecting County Courts, shall be the original papers filed in the county court ; and when the evidence has been taken by an official reporter, his transcript of the evidence used, or prepared for use, in the county court upon the motion which is the subject of the appeal, shall be the evidence so certified.

(a) The said papers, together with the judge's charge, and his judgment or decision, and also the evidence when not taken

by an official reporter, and all objections and exceptions to the evidence, shall be fastened together and transmitted with the judge's certificate to the registrar of the court of appeal, who is to return them to the county court when the appeal is disposed of.

(b) It shall not be necessary to certify or transmit the evidence, or the objections or exceptions thereto, in any case in which the appeal is from a judgment or decision upon the pleadings, or upon an action not founded upon the evidence. App. O. 39 " ("51" is misprinted "41" in this Rule).

The following 6 rules were the rules applicable to appeal books in county court appeals :—

837. An appeal shall be set down for hearing, by delivering to the registrar of the court of appeal, at least 8 days before the sittings at which the appeal is to be heard, the certified copy of the pleadings, proceedings, evidence and other matters required by section 51 of chapter 47 of the Revised Statutes of Ontario, and ten appeal books for the use of the judges of the court of appeal and the officers of the court. App. O. 41. ("51" and "47" are misprinted "41" and "43" in this Rule).

838. The books shall be printed on paper of good quality, on one side of the paper only, in demy quarto-form, with small pica type, leaded, and every tenth line of each page shall be numbered in the margin, commencing from the top of each page and not from the beginning of the book, and a statement of the reasons of appeal shall form a part thereof. App. O. 42.

839. A full copy of the pleadings shall not be printed in the books, unless it be necessary for the proper consideration of the question raised upon the appeal, *ex. gr.* in questions arising on demurrer. In other cases it shall be sufficient to state the substance of the pleadings, in a brief form, but so as to be intelligible. App. O. 43.

840. It shall not be necessary to print evidence which does not bear upon the question in appeal, but the books must always contain the opinion delivered by the judge on any motion against the verdict or judgment, and his charge in case of a trial by a

jury, and his note of judgment in case of a trial by himself. App. O. 44.

841. Exhibits used at the trial shall not be printed in the books, unless their contents are material to the question in appeal, and then only such parts as are material. App. O. 45.

842. All formal matters, such as copies of the motion papers, and rules discharging, or making rules *nisi* absolute, shall be omitted, but such reference shall be made to them including the dates thereof, as may appear necessary for giving a clear and intelligible statement of the case. App. O. 46.

These rules are, however, modified and partially superseded by 54 V. c. 12, which enacts as follows:—

1. In no case where an appeal is brought to the court of appeal from a judgment of a county court, or the judgment, decision or order of a county court judge, shall any party be required to deliver to the appellate court more than four copies of the appeal book, and the appeal books shall not be required to be printed, but they may be made by type-writing, and they shall be in words at length, the pages to be numbered consecutively, and every tenth line of each page shall be numbered in the margin and shall otherwise be, when type-written, as nearly as may be in the form in which copies of evidence are furnished by shorthand writers for use in the high court, and the appellant, if costs be awarded to him, shall, for making all the copies of appeal books required to be delivered and served, be entitled to a sum not exceeding the rate of one dollar for every eight folios of one appeal book.

2. It shall not be necessary to provide copies of the exhibits in county court appeal books.

The appeal case need not be settled, as required by Con. Rule 814 in high court appeals. The respondent may, however, apply to a judge of the court of appeal to set it aside, or he may deliver the memorandum referred to in the following rule:—

843. The appellant shall, at least six days before the sittings at which the appeal is to be heard, serve the respondent with

the notice of the setting down of the appeal and with a copy of the [printed] appeal book, and of the grounds and reasons of his appeal. In case the respondent is of opinion that any necessary matter has been omitted, he may at any time before the hearing leave with the registrar a memorandum briefly referring to such omitted matter. App. O. 48.

The word "printed" may be considered as now struck out of this rule by 52 V. c. 12, *supra*, p. 92.

The remaining rules applicable to county court appeals are as follows:—

844. If the foregoing rules are not complied with, the appeal shall not be heard, unless the court, or a judge, shall, on application made upon two clear days notice to the respondent, otherwise order. App. O. 50.

845. All books, as well in high court, as county court appeals, shall contain the date of the first proceeding in the suit or matter; and the dates of the filing of the several pleadings shall be stated at the commencement of the copy or summary thereof. In the event of non-compliance with this rule, the books will not be received by the registrar, nor will the appeal be heard. App. O. 52.

52. The appeal shall thereupon be set down for argument at the next sittings of the court of appeal, or at such other time as that court may by rule or order in that behalf provide; and that court shall give such order or direction to the court below, touching the judgment to be given in the matter, as the law requires; and shall also award costs to either party in its discretion, which costs shall be certified to and form part of the judgment of the court below; and upon receipt of the order, direction and certificate, the court below shall proceed in accordance therewith. R. S. O. 1877, c. 43. s. 42.

When an appeal is not duly prosecuted, it may be dismissed by a judge of the court of appeal: *Platt v. G. T. Ry.*, 24 C. L. J. 121.

As will be seen by the following section of the Supreme Court Act, R. S. C. c. 135, there is no appeal to that court from the court of appeal in county court cases :—

24. An appeal shall lie to the supreme court,—

(a) From all final judgments of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court of appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court.

RULES OF LAW,

53. The several rules of law enacted and declared by "The Judicature Act" shall be in force and receive effect in all county courts in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such courts. 44 V. c. 5, s. 80.

The "rules of law" are contained in sections 52 to 55 inclusive, of the Judicature Act, but several of them are, of necessity, wholly inapplicable to county courts.

When the courts of Queen's Bench and Common Pleas are at issue on the construction of an Act of Parliament, the duty of a county judge is to decide according to his own views of the law. *McInnes v. Benedict*, 8 L. J. 22.

RULES OF COURT.

54. The judges of the supreme court and of the high court respectively, shall have the same authority to make rules of court with respect to the county courts as by section 105 of "The Judicature Act" they have with respect to the high court; and the judges authorized, as mentioned in section 108 of that Act, shall, with respect to the county courts, have the like authority. 45 V. c. 11, s. 2.

Section 105 of the Judicature Act provides, amongst other things, as follows :—

105. (1) The supreme court may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for that purpose, alter and annul any rules of court for the time being in force, and may make any further or additional rules of court for carrying this Act into effect, and in particular for all or any of the following matters that is to say :—

(c) For the hearing of appeals from county courts, or a judge of a county court, from provisional judicial district courts or a judge of such court, from surrogate courts, stipendiary magistrates, or division courts, by any two or more of the judges of the supreme court, instead of the same being heard by the court of appeal, or a judge thereof, (as the case may be); and for regulating the selection of the judges of the supreme court, who shall hear such appeals, and for regulating all matters relating to the practice on such appeals : 44 V. c. 5, s. 54 (1 *a-c*. 8).

Section 108 of the Judicature Act is as follows :—

108. The Lieutenant-Governor in Council may from time to time authorize the following persons, viz.: the chief justice of Ontario, the chief justice of the queen's bench, the chancellor, the chief justice of the common pleas, and any one or more of the other justices of the supreme court, to make rules of court under this Act; every such appointment to continue for such time as shall be specified by Order in Council, and the judges so appointed, or any three of them, may make such rules, and the same shall have the same effect as if made by all the judges of the supreme court under section 105. 44 V. c. 5, s. 55.

By 52 V. c. 10, s. 12, the powers given by these sections are made applicable to district courts.

TARIFF OF COSTS.

55. The board of county judges appointed under section 298 of "The Division Courts Act," or the majority of them, may frame a tariff of costs to be allowed to solicitors and counsel in respect of actions in the county courts, and may, from time to time, alter and amend the same.

(2) The board, or any three of them, shall certify to the judges authorized to make rules under section 105 or section 108 of "The Judicature Act," any tariff so framed, or any alteration thereof; and the judges may approve, disallow or amend such tariff or alterations; and such tariff or alterations approved by the judges shall have the same force and effect as if made under the said Act by the judges so approving of the same. 47 V. c. 10, s.11.

The solicitor's tariff given hereafter is taken from the 2nd column of Tariff A, referred to in the following Con. Rule :—

1217. The table of costs set forth in the Tariff A. appended to these rules shall be that according to which all costs in civil actions in the high court and in the county courts shall be allowed and taxed, and no other fees, costs or charges than therein set down shall be allowed in respect of the matters thereby provided for.

The tariff of disbursements given hereafter is taken from the 2nd column of Tariff B, referred to in the following rule :—

1219. The fees and disbursements mentioned in the 2nd or "Lower Scale" column of the tariffs A and B, shall be the amount taxable in respect of the services or matters there enumerated in all actions where equitable relief is sought in any of the following cases :—

"(1) By a person entitled to, and seeking, an account of the dealings and transactions of a partnership dissolved or expired, the joint stock or capital not having been over \$800 ;

"(2) By a legal, or equitable mortgagee, whose mortgage has been created by some instrument in writing, or a judgment creditor, or a person entitled to a lien or security for a debt, seeking foreclosure or sale, or otherwise, to enforce his security, where the sum claimed as due does not exceed \$200 ;

"(3) By a person entitled to redeem any legal or equitable mortgage, or any charge or lien, and seeking to redeem the same, when the sum actually remaining due does not exceed \$200 ;

"(4) By any person seeking equitable relief for, or by reason of any matter whatsoever, where the subject matter involved does not exceed the sum of \$200."

It will be noticed that this Rule does not specifically make the 2nd column of Tariff B applicable to county courts, but only to those cases in the high court which were, before the abolition of the equity jurisdiction of the county courts by the "Law Reform Act" of 1868, within the jurisdiction of the county courts. The heading of the tariff itself, however, makes it applicable to county courts.

See *infra* as to costs in district courts.

The following Con. Rules, amongst others, relate to security for costs :—

1242. Where it appears, by the writ of summons, notice, or other proceeding by which an action or matter is instituted, or by an indorsement thereon, that the plaintiff resides out of Ontario, the defendant shall be entitled on præcipe to an order requiring the plaintiff within four weeks from the service of the order to give security in \$400 for the defendant's costs of the action, staying all further proceedings in the meantime, and directing that in default of such security being given, the action be dismissed with costs against such defendant, unless the court or judge upon special application for that purpose shall otherwise order. J. A. Rule 481.

1251. Where an action is brought by a foreign plaintiff liable to give security for costs, who indorses his writ of summons with particulars of his claim in such a manner that, upon motion under

Rule 789, an order allowing him to sign judgment might be made, he may, on being served with an order for security for costs, pay into court the sum of \$50, as a partial compliance with such order, and thereupon he shall be at liberty to proceed with a motion for judgment under Rule 789, but the order for security shall nevertheless, in all other respects, have its full operation and effect.

Though no distinction is made between high court and county court cases in these rules, the writer understands the *practice* is to require only one half the amounts therein mentioned, in county court cases.

The following provisions as to the right to make searches in the offices of County Courts, are contained in the "Judicature Act":

161. Every person shall hereafter have access to and be entitled to inspect the several books of the High Court and of the County Courts, containing records or entries of the writs issued, judgments entered, and chattel mortgages and bills of sale filed; and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which such access or inspection is sought; and the registrars and deputy-registrars of the High Court and all clerks of the County Courts of the Province respectively, shall, upon demand or request, produce for inspection any writ of summons or copy thereof, and any judgment roll, or chattel mortgage, or bill of sale so issued, entered or filed in their respective offices, or of which records or entries are, by law, required to be kept in such several books of the High Court and County Courts respectively. 50 V. c. 18, s. 1.

162. The fees payable in respect of such inspection of books shall be twenty-five cents as for a general search, and ten cents for each writ of summons, judgment roll, chattel mortgage or bill of sale so inspected, and ten cents per folio shall also be payable for all extracts, whether made by the person who makes the search or by the officer. 50 V. c. 18, s. 2.

These fees are not provided for by Tariff B, above mentioned.

GENERAL SESSIONS ACT.

CHAPTER 48, REVISED STATUTES OF ONTARIO, 1887.

An Act respecting the Courts of General Sessions
of the Peace.

SHORT TITLE, s. 1.
COURTS, s-s. 2, 3.
SITTINGS, s-s. 4-8.

BUSINESS OF THE COURTS, s-s. 9, 10.
CLERK OF THE PEACE, s. 11.
TARIFF OF FEES, s. 12.

HER MAJESTY, by and with the advice and
consent of the Legislative Assembly of the
Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The General Sessions Act*" R. S. O. 1877, c. 44, s. 1.

2. The authority under which Commissions of the Peace have been issued, and the authority under which the Courts of General Sessions of the Peace have been holden and are now held, and all matters and things done by or by virtue of the same, shall be, so far as relates to the authority under

which such commissions were issued and such courts have been holden, good and valid. R. S. O. 1877, c. 44, s. 2.

3. The said courts shall be in the place and stead of the county courts of England, as far as respects any purpose of outlawry, or any proceedings therein. R. S. O. 1877, c. 44 s. 3.

The jurisdiction of the sessions is thus limited and defined by R. S. O. c. 174 :—

4. No court of general or quarter sessions or recorder's court, nor any court but a superior court having criminal jurisdiction, shall have power to try any treason, or any felony punishable with death, or any libel. 32-33 V. c. 29, s. 12.

5. Neither the justices of the peace acting in and for any district, county, division, city or place, nor any judge of the sessions of the peace, nor the recorder of any city, shall, at any session of the peace, or at any adjournment thereof, try any person for any offence under sections twenty-one, twenty-two and twenty-three of the "Act respecting Offences against the Person." 32-33 V. c. 20, s. 48.

6. No court of general or quarter sessions of the peace shall have power to try any offence under any of the provisions of sections sixty to seventy-six, both inclusive, of the "Larceny Act." 32-33 V. c. 21, s. 92.

The jurisdiction is further limited and defined by 53 V. c. 18 (Ont.), which is as follows :—

An Act relating to the Jurisdiction of Courts of General Sessions of the Peace.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. No court of general sessions of the peace, or county judge's criminal court, no judge of any county court, no junior

or deputy judge thereof, authorized to act as chairman of the general sessions of the peace for the county, no judge of any provisional district, no judge of any district court authorized respectively to act as chairman of the general sessions of the peace, nor any court but the high court of justice or courts of assize, nisi prius, oyer and terminer and general gaol delivery, shall have power to try any treason, any felony punishable with death, or any homicide, or any libel.

2. The courts of general sessions of the peace, the county judges criminal courts and police or stipendiary magistrates, shall have jurisdiction to try any person for any offence under any of the provisions of sections 28 to 81, both inclusive, of the Revised Statutes of Canada, chapter 165, "An Act respecting Forgery."

3. Subject to the terms of this Act, the expression "The Speedy Trials Act," in the Revised Statutes of Ontario, chapter 49, shall hereafter mean "The Speedy Trials Act" of the Parliament of Canada, passed since, namely, in the 52nd year of Her Majesty's reign and chaptered 47.

4. To prevent misapprehension, it is hereby declared and enacted that the power to appoint and dismiss constables under the Revised "Act respecting Constables" is vested in the justices of the peace at the general sessions of the peace or any adjournment thereof and not in the justices of the peace at any special sessions mentioned in the said Act.

The sessions also have jurisdiction in appeals from summary convictions and orders made by justices of the peace, as provided by R. S. C. c. 178, ss. 76, *et seq.*, as amended by 51 V. c. 45, and 53 V. c. 37, (Dom.). A minute discussion of the provisions of these statutes would be foreign to this work; and besides, the subject will be found fully treated in Clarke's Magistrate's Manual, second edition, page 277, *et seq.*

SITTINGS.

4. (1) Except in the County of York, and subject to the provisions of section 19 of "The Local Courts Act," the sittings of the courts shall

be held semi-annually, commencing on the second Tuesday in the months of June and December respectively in each year.

(2) In the County of York, the courts shall be held four times in the year, commencing on the first Tuesday in the months of December and March, and on the second Tuesday of the months of May and September respectively in each year. R. S. O. 1877, c. 44, s. 4.

See notes to R. S. O. c. 46, s. 17, and c. 47, s. 13, *supra*.

5. The court of general sessions of the peace shall be held in the county town of the county, but in time of war or other exigency, the Lieutenant-Governor may, by proclamation, authorize the holding of the court at some other place in the county. R. S. O. 1877, c. 44, s. 5.

6. The judge of the county court of every county, or, in case of his death or absence, the judge, junior or acting judge, or deputy judge shall preside as chairman at the general sessions of the peace for the county. R. S. O. 1877, c. 44, s. 6.

By R. S. O. c. 46, s. 18, *supra*, the "grouping clause" of that Act are made applicable to the courts of general sessions in grouped counties, but these sections have been held to be *ultra vires* as regards courts of general sessions, in *Gibson v. McDonald*, 7 O. R. 401. (See note to chap. 46, sec. 17, *supra*.)

7. Where a judge or junior or deputy judge is present, it shall not be necessary, in order to constitute a court or sittings of the general sessions of the peace, that an associate or other justice of the

peace should be present at the court or sittings.
R. S. O. 1877, c. 44, s. 7.

8. (1) Where, from illness or from other casualty; the judge who is to hold the sittings of the general sessions of the peace, is unable to hold the same at the time appointed therefor, the sheriff of the county, or, in his absence, his deputy, may adjourn by his proclamation, the said court to any hour on the following day, to be by him named, and so from day to day, until the judge is able to hold the court, or until he receives other directions from the judge or provincial secretary.

(2) The sheriff shall forthwith notify any adjournment to the provincial secretary, for the information of the Lieutenant-Governor. R. S. O. 1877, c. 44, s. 8.

9. It shall not be necessary, in opening any court of general sessions, to read the commission of the peace, or other commission issued for the county for which the court is held; but the court shall have the same powers and authorities, and proceed in the same manner, as if the commission had been read. R. S. O. 1877, c. 44, s. 9.

RESCINDING ORDERS OF COURT.

10. Except where otherwise provided by law, any order which has been passed or recorded by any number of justices of the peace in any county, shall not be rescinded unless at least the same number is present. R. S. O. 1877, c. 44, s. 10.

CLERK OF THE PEACE.

11. (1) No person shall be appointed clerk of the peace for any county who is not a barrister-at-law, of at least three years' standing at the bar of Ontario; and, except in the County of York, every clerk of the peace shall be *ex officio* county crown attorney for the county of which he is clerk of the peace.

(2) Except in the County of York, whenever a vacancy occurs in the office of the clerk of the peace for a county, in which the clerk of the peace was not, previous to such vacancy occurring, also county crown attorney for the county, the county crown attorney shall be *ex officio* clerk of the peace for the county. R. S. O. 1877, c. 44, s. 11 (1, 2).

(3) Where a person holding the office of county crown attorney and clerk of the peace desires, from the condition of his health or from his age, to resign the office of county crown attorney, retaining the office of clerk of the peace, he may do so if the Lieutenant-Governor thinks fit to accept his resignation; and in such case the county crown attorney appointed in his place shall, on a vacancy occurring in the office of the clerk of the peace, be *ex officio* clerk of the peace for the county, as in other cases. 49 V. c. 16, s. 10.

(4) In the County of York, the clerk of the peace shall not be *ex officio* county crown attorney nor the county crown attorney *ex officio* clerk of

the peace, but the offices may respectively be held and enjoyed by different persons. R. S. O. 1877, c. 44, s. 11 (3).

12. (1) The board of county judges appointed under section 298 of "The Division Courts Act," or the majority of them, may frame a tariff of fees and costs to be allowed in respect of proceedings in the courts of general sessions of the peace to witnesses and to the clerk of the peace, and to solicitors and counsel practising therein, including the county attorney, and may from time to time alter and amend the same.

(2) The board or any three of them shall certify to the judges authorized to make rules under section 105 or section 108 of "The Judicature Act" any tariff so framed, or any alteration thereof, and any judges authorized to make rules under the said Act may approve, disallow or amend any such tariff or alterations.

(3) Any tariff or alteration so approved of, or amended and approved, shall have the same force and effect as if it had been enacted by the Legislature of this Province. 48 V. c. 13, s. 25 (1, 3, 4).

R. S. O. c. 83, s. 13, provides as follows :—

13. Where any sittings of the high court, county court, or general sessions of the peace is continued after eight o'clock in the evening, an additional allowance, not exceeding one day's pay, may, upon the certificate of the presiding judge, be made to any officer in attendance upon such court who is paid for services by a per diem allowance. 48 V. c. 13, s. 32.

For tariffs of fees under section 12, see schedule to R. S. O. c. 83, an Ewart's Manual of Costs, pp. 162-67.

COUNTY JUDGES CRIMINAL COURTS' ACT.

CHAPTER 49, REVISED STATUTES OF ONTARIO, 1887.

An Act respecting the County Judges Criminal Courts.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The judge of every county court, or the junior or deputy judge thereof, authorised to act as chairman of the general sessions of the peace for any county, is constituted a court of record for the trial, out of sessions and without a jury, of any persons committed to goal on a charge of being guilty of any offence for which such person may be tried at a court of general sessions of the peace, and for which the person so committed consents to be tried out of sessions, and without a jury; and the court so constituted shall have the powers and duties which "The Speedy Trials Act," purports to give, so far as the Legislature of this Province can give the same. R. S. O. 1877, c. 45, s. 1.

2. The court constituted by the preceding section shall be called "The County Judge's Criminal Court" of the county in which the same is held. R. S. O. 1877, c. 45, s. 2.

This Act is extended to provisional judicial districts by R. S. O. c. 91, s. 53, *infra*.

As to offences which may be tried at the sessions, see notes to R. S. O. c. 48, s. 3, *supra*.

As to the practice of this court, see 52 V. c. 47 (Dom.), as amended by 53 V. c. 47, ss. 29 and 30.

UNORGANIZED TERRITORY ACT.

CHAPTER 91, REVISED STATUTES OF ONTARIO, 1887.

An Act respecting the Administration of Justice
in the Districts of Thunder Bay, Rainy
River, Muskoka, Parry Sound, and Nipissing.

SHORT TITLE, s. 1.

TEMPORARY JUDICIAL DISTRICTS:

Organization, s. 2.

Stipendiary Magistrates, ss.
3-7.

Justice of the Peace, ss. 8, 9.

Returns of Convictions, s. 10.

Appeals from Magistrates, s.
11.

Appointment of gaol keepers,
s. 12.

Application of Fines, s. 13.

Accounts, Returns, etc., by
Stipend, Magistrates, s. 14.

Gaols and Lock-ups, ss. 15-
17, 81.

Division Courts, ss. 18-34.

Registration of Deeds, ss.
35-38.

Districts united to Simcoe &
Thunder Bay for certain
Judicial purposes, s. 39.

Execution of Writs, s. 40.

Special provisions as to
Nipissing, s. 41, 42.

Special provisions as to
Rainy River, s. 43.

PROVISIONAL JUDICIAL DISTRICTS:

Organization, ss. 44, 45.

Administration of Justice,
ss. 46-55.

Jurisdiction of District
Courts, ss. 56-58.

Sittings, ss. 59-72.

Time for Appearance, s. 60.

Costs, s. 61.

Sheriff of Thunder Bay, s. 62.
Service of Papers by Sheriff,
s. 63.

Time for sale of lands under
execution, s. 63 (3).

Jurors and Jury Panels, ss.
64-66.

Sittings of High Court, s. 66.
Deputy Clerk, ss. 67-69.

Venue in actions arising in
Rainy River, s. 68.

Surrogate Courts, s. 69, 70.

Appointment of Sheriff of
Rainy River, s. 71.

COURTS IN DISTRICTS AND PROVI-
SIONAL COUNTIES, ss. 73-77.

CONSTABLES IN DISTRICTS AND
PROVISIONAL COUNTIES, ss.
78, 79.

ALTERATION OF LIMITS, s. 80.

GAOLS TO BE PROVIDED, s. 81.

TRESPASSES BY ANIMALS, s. 82.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Unorganized Territory Act.*"

The portions of the Act inapplicable to the subject, are omitted.

The provisional judicial districts are Algoma, Thunder Bay and Muskoka and Parry Sound. The District of Rainy River is annexed to Thunder Bay for judicial purposes. The Woodmen's Lien Act, 54 V. c. 22, is in force only in the Districts of Algoma, Thunder Bay and Rainy River.

PROVISIONAL JUDICIAL DISTRICTS.

44. The Lieutenant-Governor may from time to time, by proclamation under the Great Seal, declare that, from and after a day to be therein named, either of the Districts of Muskoka or Parry Sound with or without any other territory and any other part or parts of the unorganized tracts of country in this Province bordering upon and adjacent to Lakes Superior and Huron, including the islands in those Lakes within this Province, and also any other part of Ontario not included within the limits of any county or township, shall form a provisional judicial district or districts, and define the limits of such district or districts; and such provisional judicial district or districts shall thereupon be formed accordingly. R. S. O. 1877, c. 7, s. 28; c. 90, s. 29.

52. There shall be a district judge appointed in every provisional judicial district, and such judge shall be a barrister of not less than five years stand-

ing at the Bar of Ontario; and such judge shall have the same powers, duties and emoluments as a county judge, and he shall hold his office during good behaviour, and shall reside within the limits of his provisional judicial district, and shall not, directly or indirectly, practice or carry on or conduct any business in the profession or practice of the law while holding his office as judge, on pain of forfeiting the same, and under penalty of \$400. R. S. O. 1877, c. 90, s. 33; 50 V. c. 8, Sched.

53. (1) The Act respecting the "County Judges' Criminal Courts," shall extend to the judges of the district courts of the districts of Algoma and Thunder Bay, and to the judge of every provisional judicial district hereafter established; and the laws now in force or which may be hereafter passed with respect to courts of general sessions of the peace in counties, and the powers of the justices thereat, or with respect to county and division courts, or the power, authority or jurisdiction of the judges of such courts, whether sitting in or out of court, and to the appointment and duties of the local crown attorneys, clerks of the peace, sheriffs, coroners, clerks, constables and all other officers attached to such courts or employed in the administration of justice in connection therewith, shall, unless it is otherwise provided, or unless there is something in the context indicating a different intention, apply to each of the said provisional judicial districts, and to

every provisional judicial district hereafter established. R. S. O. 1877, c. 90, s. 34; 47 V. c. 14, s. 9.

(2) Such courts shall be held in each such new provisional judicial district at the place which the Lieutenant-Governor in Council by proclamation from time to time appoints, and the word "district" shall be substituted for the word "county" in the titles of such courts and officers, as well as in the interpretation of such laws, in their application to such provisional judicial districts. R. S. O. 1877, c. 90, s. 34.

54. (1) The district and surrogate courts established for the provisional judicial districts of Algoma and Thunder Bay are hereby continued.

(2) The district courts respectively are to be presided over by a judge to be appointed in accordance with the provisions of the "British North America Act, 1867," and the district judges shall be the judges of the surrogate courts. 47 V. c. 14. s. 2.

As to appointment of county and district judges, see R. S. O. c. 46, ss. 2 and 3, and sections 96 and 97 of the B. N. A. Act, *supra*.

As to district courts in Parry Sound and Muskoka, see 51 V. c. 13; 52 V. c. 17; and 53 V. c. 26.

53 V. c. 25 is as follows :—

An Act to provide for the appointment of Junior and Deputy Judges in Provisional Judicial Districts.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. A junior judge may be appointed for the provisional judicial district of Algoma.

2. Where the population of any other territory now or hereafter forming a provisional judicial district exceeds forty thousand, as shewn by an official census, a junior judge may be appointed for such district.

3. The 52nd section of "The Unorganized Territory Act" and the provisions of "The Local Courts Act" with respect to junior judges shall apply to such junior judges as mentioned in the preceding sections.

4. The powers and authorities exercisable by the senior judge of a provisional judicial district to which a junior judge is appointed, shall be possessed by and may be executed by the junior judge, subject to the general regulation and supervision of the junior judge.

The provisions of "The Local Courts Act" with respect to deputy judges shall apply to provisional judicial districts in the same manner as to deputy judges of counties

JURISDICTION.

56. (1) Subject to the exceptions in section 58 contained, the district courts of Algoma and Thunder Bay shall, in addition to the jurisdiction possessed by county courts, each have jurisdiction and hold plea subject to appeal:

(a) In all actions relating to debt, covenant and contract

Provided always, where the case is beyond the jurisdiction of county courts, that the contract was made within the district, or the cause of action arose therein, or the defendant resides therein;

(b) In replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of \$400, and the goods, property, or effects to be replevied, are in the said district;

(c) In all other personal actions where the amount claimed does not exceed \$400;

(d) For the recovery of land situate in the district.

(2) After a trial, in an action for the recovery of land, or in replevin where the value of the goods claimed exceeds \$200, or in any other case where the cause of action is beyond the jurisdiction possessed by county courts, and a verdict or judgment exceeding \$200 is obtained, any party entitled to move to set aside or vary the verdict or judgment, or to enter a non-suit, may, if he so desires, instead of moving in the district court and without moving the cause into the high court by *certiorari* or otherwise, move in the high court for such rule or order as he claims to be entitled to. The motion

shall be made in the same manner, and subject to the like limitations as to time and otherwise, as the motion would have been subject to if the action had been in the high court and had been tried at a sittings thereof, and the judgment or order of the high court shall be acted upon as if it were a judgment or order of the said district court. The high court shall have jurisdiction to make any order, or give any judgment which could be made or given in the cause by the district court.

(3) Where a party is entitled and desires to move under the next preceding sub-section, he shall notify the clerk of the district court in writing to transmit the record or certified copy of pleadings and any exhibits filed at the trial to the registrar at Toronto of the division of the high court in which he intends to move, and subject to any general rules, the subsequent practice shall be the same as in case of a trial in the high court. 47 V. c. 14, s. 4.

There is also an appeal to the court of appeal, under the County Courts Act from the judgment of a district court, in addition to the optional right to move against the verdict in the high court. *Bank of Minnesota v. Page*, 14 A.R. 347.

As to jurisdiction of county courts, see R. S. O. c. 47, ss. 18-22, *supra*.

57. (1) The district courts of the districts of Algoma and Thunder Bay, shall have the same jurisdiction as the high court with respect to injunctions restraining the committing of waste or trespass on property, by unlawfully cutting, destroying or removing trees or timber and with respect to incidental relief, and the practice in

the exercise of such jurisdiction shall be the same, as nearly as may be, as the practice of the high court.

(2) The high court or a judge thereof, on the application of any party to the proceeding made on notice, may order that the whole proceeding be transferred to the high court, or to any division thereof; and in that case all papers filed in the district court shall be transmitted by the clerk, or other proper officer of the district court to the high court; and the action shall thenceforth be continued and prosecuted in the high court, as if it had been originally commenced therein.

(3) The order may be made on such terms as to payment of costs, giving security and otherwise, as the court or judge thinks fit.

(4) No such case shall be transferred unless the value of the subject matter or the damage to either party appears to amount to upwards of \$1,000, nor unless the case appears to the court or judge fit to be tried in the high court. 50 V. c. 12, ss. 1-3.

58. The said district courts shall not have jurisdiction in any of the following cases:—

1. Actions for a gambling debt; or upon a note of hand or other document given wholly or partly in consideration of a gambling debt;

2. Actions for malicious prosecution, libel, slander, criminal conversation, seduction, or breach of

promise of marriage, if the damages sought to be recovered exceed \$200.

3. Actions against a justice of the peace for anything done by him in the execution of his office, if the damages claimed exceed \$100. 47 V. c. 14, s. 5.

As to exceptions to jurisdiction of county courts, see R. S. O. c. 47, s. 18, *supra*.

The jurisdiction conferred on the District Courts is not subject to the exceptions to the general jurisdiction of the County Courts mentioned in R. S. O. c. 47, s. 18, and therefore, the District Court has power to try actions in which the title to land comes in question. *McQuaid v. Cooper, et al.*, 11 O. R. 213.

SITTINGS.

59. The sittings at the district towns of the district courts of Algoma and Thunder Bay, for trials and assessments by jury, and of the general sessions of the said districts, shall be held on the second Tuesday of the months of June and November of each year. 47 V. c. 10, s. 8; c. 14, ss. 6 and 18.

As to times of sittings of county courts and general sessions in counties, see R. S. O. c. 47, s. 13, and c. 48, s. 4, *supra*.

APPEARANCE.

60. (1) The time allowed for appearance to a writ of summons issued in either of the said districts, whether out of the high court of justice or the district court, for service within Ontario, or to a writ of *capias* or *repievin* issued as aforesaid, shall be 20 days after the service of the writ, inclusive of the day of service.

(2) The time allowed in any writ of *capias* issued as aforesaid, for putting in special bail, shall be 30 days, inclusive of the day of execution, unless a different time is fixed by the order for the writ.

(3) The time allowed for appearance to any writ in an action for the recovery of land issued as aforesaid, shall be 30 days, inclusive of the day of service.

(4) Where any of the said writs is served or executed between the 1st day of November and the 30th day of June, or on either of the said days, a defendant shall be entitled to an additional period of ten days for appearing to the writ or putting in special bail.

(5) The time allowed for appearance to any such writ, issued in any part of Ontario out of the high court or out of any county court, served within Algoma or Thunder Bay, and for putting in special bail to any writ of *capias* executed within either of the said districts, shall be the same as is hereinbefore provided in the case of a like writ issued therein. 47 V. c. 14, s. 7.

Con. Rule 275 provides as follows :—

275. When a defendant is served within Ontario, and not in Algoma or Thunder Bay, he shall appear within ten days, including the day of service.

(a) If served within Algoma or Thunder Bay, he is to have thirty days in an action for the recovery of land, and twenty days in other actions, after the service, except where he is served

between the first day of November and the 30th day of June or on either of said days, in which case he shall have an additional period of ten days. 47 V. c. 14, s. 7.

COSTS.

61. (1) Where the amount claimed in any action in the said district courts, or where in the case of an action for the recovery of land or in replevin, the subject matter of the action, as appearing in the writ in the action or in the affidavit filed to obtain the writ in replevin, is beyond the jurisdiction of the county courts in other parts of Ontario, costs to a successful defendant shall be taxed according to the high court tariff.

(2) In like manner where the plaintiff recovers in respect to a cause of action beyond the jurisdiction of the county courts, costs shall be taxed to him according to the high court tariff, subject however to his obtaining the certificate or order of the judge where in a like case such certificate or order is required in the high court.

(3) In respect to any action within the provisions of the first part of this section the solicitor of an unsuccessful plaintiff shall be entitled to charge his client county court costs only, unless he was instructed in writing by such client to sue in respect to a matter beyond the jurisdiction of the said county courts, in which case the said solicitor shall be entitled to charge costs according

to the high court tariff. 43 V. c. 12, s. 11 (1-3);
47 V. c. 14, s. 9.

As to jurisdiction of county courts, see R. S. O. c. 47, ss. 18-22, *supra*.

SHERIFFS.

62. (1) The Lieutenant-Governor may appoint a sheriff of the said District of Thunder Bay, who shall keep an office at the Town of Port Arthur in the said district.

(2) All writs and other process requiring to be directed to a sheriff and intended to be executed within that portion of the said District of Thunder Bay which is not included within the District of Rainy River, shall be directed to the sheriff of Thunder Bay.

(3) The "Act respecting the Office of Sheriff" shall apply to the said sheriff of Thunder Bay and Rainy River, except that it shall not be necessary for the sheriff to justify in a sum greater than \$2,000 over and above his just debts, nor shall it be requisite that such sheriff shall be possessed of real estate to the said amount. 43 V. c. 12, s. 12 (5); 48 V. c. 20, s. 6 (4).

63. (1) The sheriff of Algoma, Thunder Bay, or Rainy River shall not be required to execute or serve any writ, paper or proceeding for any party other than the Crown, until an amount reasonably sufficient to cover his mileage in travelling for the

purpose of executing or serving the writ, paper, or proceedings is paid or tendered to him, unless the distance to be travelled for the purpose of such execution or service is less than ten miles.

(2) Where the distance is less than ten miles such sheriff shall not be required to execute or serve such writ, paper, or proceeding without such reasonable sum as aforesaid being paid or tendered him if he has previously notified the solicitor, or party whose name is endorsed on such writ, paper, or proceeding, or by whom such service is required, that prepayment of mileage will be required before execution or service of any writ, paper or proceeding which such solicitor or party may desire to have served.

(3) No sheriff, deputy sheriff, or other officer shall sell or expose for sale under execution, any lands or tenements in the Districts of Algoma, Thunder Bay or Rainy River, except during the months of July, August, September, or October. 43 V. c. 12, s. 12 (6-8;) 48 V. c. 20, s. 6 (4).

JURORS.

64. (1) It shall not be necessary to issue precepts for the return of panels of grand or petit jurors for any sittings of the district court of the Districts of Algoma or Thunder Bay, or of the general sessions of the peace for the said districts, if it appears to the judge of the said district court

that at such sittings there will be no business to be brought before such jurors. R. S. O. 1877, c. 90, s. 40; 47 V. c. 14, s. 9.

(2) Where there appears to be need that precepts should issue for the return of panels of jurors aforesaid, it shall be the duty of the clerk of the peace of the district, and the clerk of the district court, to inform the said judge thereof, in order that precepts may be issued for the return of jurors at the ensuing sittings of the court. R. S. O. 1877, c. 90, s. 41; 47 V. c. 14, s. 9.

(3) In case jurors are required for either of the said courts the necessary precepts shall be issued for both of the said courts. R. S. O. 1877, c. 90, s. 42; 47 V. c. 14, s. 9.

65. If the business to be brought before jurors arises so shortly before the sittings, that the jurors cannot reasonably be summoned in sufficient time to attend on the day appointed for the commencement of the sittings, the said judge may order that the jurors be summoned for a subsequent day, and the said court shall, in such case commence its sittings upon the day by law appointed therefor, and shall dispose of such business as may be disposed of without a jury, and shall be thereafter adjourned to the day for which the jurors are summoned as aforesaid. The judge may make the order hereinbefore authorized, on the day upon which the sittings of the said court commence, or

upon any earlier day. R. S. O. 1877, c. 90, s. 43;
47 V. c. 14, s. 9.

DEPUTY CLERKS.

67. (1) The Lieutenant-Governor may, from time to time appoint, under the great seal, an officer for the district court of the Provisional Judicial District of Thunder Bay, to be called the deputy clerk for Rainy River, who shall hold office during pleasure, and shall keep his office at Rat Portage.

(2) In case after an appointment has been made a vacancy occurs in such office, the clerk of the division court at Rat Portage shall, *ex-officio*, be deputy clerk until another appointment is made.

(3) The said deputy clerk shall issue writs for the commencement of actions in the district court, and shall, in respect of actions so commenced and of proceedings therein, perform the like duties and have the like powers and rights as are performed or possessed by the clerk of the district court at Port Arthur in respect of actions commenced by writs issued out of his office, and of proceedings therein; and the said deputy clerk shall also issue such writs and process as may be required in such actions as may in like cases be issued by the said clerk of the district court, and may renew any such writs as by law may be renewed.

(4) No writ of *capias* issued under the next preceding sub-section shall be executed outside of the District of Rainy River; and every writ of *capias* so issued shall be marked by the clerk as follows: "Only to be executed within the District of Rainy River," but this shall not prevent a copy of such writ of *capias* being served at any place within Ontario.

(5) The deputy clerk of the said district court shall have the custody of a seal similar in design to the seal of the court in the custody of the clerk at Port Arthur, and the said deputy clerk shall seal with the said seal all writs, process and proceedings requiring the seal of the said court; and every writ, process or proceeding sealed with such seal shall be held to be duly sealed with the seal of the said court. 48 V. c. 20, s. 2.

68. In actions arising in the District of Rainy River in which the venue is local, the writ shall be issued out of the office of the deputy clerk, and Rat Portage shall be named as the place of trial in the same manner as if the said district was a separate county; but the judge may, if he sees fit, change the place of trial in any action. 48 V. c. 20, s. 3.

71. (1) The Lieutenant-Governor may appoint a sheriff of the said District of Rainy River, who shall keep his office at Rat Portage.

(2) All writs and other process requiring to be directed to a sheriff and intended to be executed

within the said District of Rainy River shall be directed to the said sheriff. 48 V. c. 20, s. 6, (1, 2).

72. (1) Besides the sittings at the district town, the district court of Thunder Bay shall hold sittings on the first Tuesday of the month of June and the fourth Tuesday of the month of November of each year, at Rat Portage, for trials and assessments by jury and sittings of the general sessions of the peace of Thunder Bay shall be held on the same day.

(2) The said general sessions of the peace shall be for the trial of causes within the jurisdiction of the general sessions where the offence to be tried was committed within the District of Rainy River, and for the trial of appeals to the general sessions from a decision, order or conviction made by a justice of the peace within such district. 48 V. c. 20, s. 9.

COURTS IN DISTRICTS AND PROVISIONAL COUNTIES.

73. (1) The judge of any county or district court to whose jurisdiction any district or provisional county belongs, may appoint additional sittings of the county or district court and of the court of the general sessions of the peace, or of either of such courts, to be held at such place or places within such district or provisional county as he thinks fit.

(2) Such sittings of the county court shall be for the trial of causes, where the contract was made within the district or provisional county; or

if the action is not upon contract, then where the cause of action arose within the district or provisional county.

(3) Such sessions of the peace shall be for the trial of causes within the jurisdiction of the general sessions of the peace, provided the offence to be tried was committed within the district or provisional county. R. S. O. 1877, c. 90, s. 52.

74. Sittings in any of the said courts shall also be held at such times and places as the Lieutenant-Governor in Council may appoint. R. S. O. 1877, c. 90, s. 53.

75. (1) In case the Lieutenant-Governor directs sittings of the court of general sessions of the peace of any county or district to be held at regular periods at some place within a district or provisional county, and issues his proclamation in that behalf, such sittings shall thereafter be the proper court for the trial of appeals to the general sessions from a decision, order or conviction, made by a justice of the peace within such district or provisional county, and such court shall have full and complete jurisdiction and authority for the trial of every such appeal, as well as for the trial, under section 73 of this Act, of any person charged with an offence committed within the district or provisional county over which the sessions have jurisdiction.

(2) Where an offender may be more conveniently tried within that portion of the county or

district outside of such district or provisional county, such offender may be so tried. R. S. O. 1877, c. 90, s. 54.

76. The high court or a judge thereof may direct that any action for the recovery of lands lying in the provisional judicial district, territorial district, or provisional county in which any sittings of a county or district court are to be held, or any other action pending in the high court, shall be tried at such sittings; or may order that the witnesses shall be examined and the facts ascertained at such sittings and the questions of law arising thereon reserved for the opinion of the court; or may make such like order for the purpose of facilitating the determination of the matters in dispute in the action as he may think fit. R. S. O. 1877, c. 90, s. 55 (1).

As to trials of high court cases in county courts, see section 49 of the Judicature Act, and Con. Rule, 690 *et seq.*, *supra*.

77. When such sittings are held in a provisional county the sheriff or other officer whose duty it is, or who may be legally required, to summon and return jurors or persons to serve as jurors for such courts, may select, choose and return for such jurors, in case jurors are required, any of the inhabitants of such provisional county, without reference to the mode prescribed by selecting, balloting or returning jurors for "The Jurors' Act." R. S. O. c. 90, s. 56.

See R. S. O. c. 6, as to Provisional County of Haliburton,

TARIFF A.

TABLE OF COSTS IN THE COUNTY COURTS.

(Referred to in Rule 1217, supra p. 96.)

General allowance for Plaintiffs and Defendants, as well between
Solicitor and Client as between Party and Party :—

	s. c.
1. Instructions to sue in undefended cases.....	2 00
2. In defended cases.....	3 00
3. Instructions to defend.....	3 00
4. Instructions for petition where no writ of summons issued.....	1 00

WRITS.

5. All writs, except writs of execution, subpoenas, and concurrent and renewed writs.....	1 00
6. Concurrent writ.....	0 75
7. Renewed writs (except writs of execution).....	0 75
8. All writs if over four folios, for every folio.....	0 20
9. Subpœna <i>ad testificandum</i>	0 50
10. Subpœna <i>duces tecum</i>	0 75
11. All subpoenas if over four folios, additional per folio.....	0 15
12. Notice of writ for service in lieu of writ out of jurisdiction and copy.....	0 75
13. (Alias, and subsequent, writs, to be allowed as originals.).....	
14. Special indorsement of writ of summons.....	0 75
15. Suing out any writ of execution.....	4 00
Renewal of any writ of execution.....	2 50

(In both cases, including placing the same in the Sheriff's hands,
all attendances, indorsements and letters in connection there-
with).

COPY AND SERVICE OF WRITS OF SUMMONS, AND OTHER PROCESS.

16. For copy, including copy of notices required to be indorsed, each	\$0 75
If over four folios, for every additional folio.....	0 10
17. Service of each copy of writ, if not done by the Sheriff or an officer employed by him, when taxable to solicitor on Sheriff's default.....	0 50
18. If served at a distance of over two miles from the nearest place of business, or office of the solicitor serving same, for each mile beyond such two miles.....	0 10
19. For service of writ out of jurisdiction.....	Such allowance as the Taxing Officer or C. C. Judge shall think fit.

INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

20. To counsel in special matters	\$0 50
21. To counsel in common matters	0 25
22. For special affidavits when allowed by the county court clerk....	0 50
23. For special affidavit on production when allowed by the taxing officer	1 00
24. For pleadings in action	1 00
25. For counter-claim, when such claim could not prior to the Ont. Jud. Act. 1881, have formed the subject of a set-off	1 00
26. For reply to such counter-claims	1 00
27. To amend any pleading when the amendment is proper	1 00
28. For confession of defence under rule 440.....	1 00
29. For special case in course of action	1 00
30. For special case when no writ issued, or pleadings had, and no instructions to sue allowed.....	2 00
31. To add parties by order of court or judge	1 00
32. For brief.....	0 50
33. For every suggestion.....	1 00
34. For adding parties in consequence of marriage, death, assign- ment, etc.....	0 50
35. For issue of fact, by consent, or judge's order	1 00
36. To defend added parties after suggestion of death of original party, or on revivor	1 00
37. For confession of action in ejectment as to the whole, or in part.	0 50
38. To strike or reduce special jury.....	1 00
39. For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a charge.....	1 00

DRAWING PLEADINGS, ETC.

40. Statement of claim	\$1 00
41. If above ten folios, for every folio above ten, in addition.....	0 15
42. Statement of defence, if five folios or under	1 00
43. If above five folios, for every folio in addition.....	0 20
44. Statement of defence and counter-claim, up to fifteen folios	1 50
45. For every folio over fifteen.....	0 15
46. Reply and other pleadings for or on behalf of plaintiff or defendant	1 00
47. If above ten folios, for every folio in addition	0 15
48. Demurrer	1 00
49. Petition, per folio	0 15
50. Issue for trial of facts by agreement or order, for every folio	0 20
52. Special case, per folio	0 20
53. Drawing interrogatories, or answers for any purposes required by law, per folio	0 20
54. Drawing reasons for or against appeal, per folio	0 20
55. (The above charges do not include engrossing, or copies to file or serve)	
56. Taking cognovit and entering judgment thereon, when there has been no previous proceeding, and the true debt does not exceed \$200	8 00
57. For same services when the true debt exceeds \$200	10 00
58. Drawing and engrossing cognovit, and attending execution, when there have been previous proceedings.....	1 00

COPIES.

59. Of pleadings, brief and other documents, when no other provision is made, and copies properly allowable	0 10
60. Certified copy of pleadings, or issue, for use of judge.....	0 75
61. For every folio above 15, per folio	0 10
62. Of special and common orders of court or a judge.....	0 50
63. Of special order of court above three folios, per folio.....	0 10

NOTICES, INCLUDING ONE COPY.

64. Of appearance, when duly entered and notice given on the day of appearance, but not otherwise	0 25
65. To Sheriff, to discharge prisoner out of custody.....	0 50
66. Notice, in action for recovery of land, to defend for part of premises; not to be allowed when defence limited by appearance.....	0 50
If above three folios, per folio in addition	0 15
67. Notice of claimant's or defendant's title in action for recovery of land, same fees.....	

NOTICES, INCLUDING ONE COPY—*Continued.*

68. Notice of entry of appearance in action for recovery of land by a party not named in writ	\$0 25
69. Demand of particulars	0 50
70. Particulars of claim, demand, set-off, or counter claim, five folios or under	0 75
If exceeding five folios, per folio in addition	0 15
72. Of discontinuance and one copy	0 40
For every additional copy, per folio	0 10
73. Of disputing amount of claim	0 25
74. Of confession of action in action for recovery of land as to whole or part	0 40
75. Notice in lieu of statement of claim, and one copy	0 25
For every additional copy, per folio	0 10
76. Of trial or assessment and one copy	0 25
For every additional copy, per folio	0 10
77. Demand of residence of plaintiff	0 25
78. Demand of names of partners	0 25
79. All common notices not above specified	0 25
80. Notice to admit, and produce, if not exceeding two folios, and one copy	0 25
For every additional copy, per folio	0 10
81. For each necessary folio above two	0 20
82. Notice of setting down on motion for judgment, or on further directions and one copy	0 25
For every additional copy, per folio	0 10
83. Notice of motion in Court, or Chambers, engrossing and copy to serve, per folio	0 15
For every additional copy, per folio	0 10
84. Notice of taxation, or appointment to tax, and one copy	0 25
For every additional copy, per folio	0 10
85. For preparing, and filling up for service, in any cause or matter, each notice to creditors to prove claims, and each notice that cheque may be received, specifying the amounts to be received for principal and interest, and costs, if any—including mailing	0 25
86. Notice of filing affidavits, when required, and one copy (only one notice to be allowed for a set of affidavits filed, or which ought to be filed together)	0 25
For every additional copy, per folio	0 10
87. Notice by Defendant to third party, under Rule 329	0 50

PERUSALS.

88. Of each of the pleadings as defined by the Judicature Act	0 50
89. Of special case by the solicitor of any party, except the one by whom it is prepared, when the case is submitted in the course of the cause	1 00

PERUSALS—*Continued.*

- | | |
|---|--------|
| 90. And in special, or contested actions, or matters, or of interrogatories, and cross-interrogatories on commission..... | \$0 50 |
| 91. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary if 20 folios or under | 0 50 |

ATTENDANCES.

- | | |
|--|------|
| 92. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission, altogether..... | 0 50 |
| To be increased by County Court Clerk in cases of special, difficult and important nature, to | 1 00 |
| 93. Attending on return of motion, in Chambers..... | 0 50 |
| To be increased in the discretion of the Judge, to..... | 1 50 |
| 94. On consultation, or conference, with counsel, in special, difficult, and important matters, in the discretion of the County Court Clerk, to. | 1 00 |
| To be increased, as between solicitor and client, in the discretion of the C. C. Judge to, not exceeding..... | 3 00 |
| No special attendance to be allowed to a solicitor on proceedings on which he also appears as counsel. | |
| 95. Solicitor attending Court on trial of cause, when not himself counsel, or partner of counsel..... | 1 00 |
| And in special, difficult, and important cases, each hour necessarily present at trial..... | 1 00 |
| In no case to exceed, per day..... | 5 00 |
| (Provided the attendance of such solicitor, and the length of time of such attendance, be duly entered at the time in the book of the C. C. Clerk, or other officer of the Court present at the time, or proved by affidavit). | |
| 96. To hear judgment when not given on close of argument..... | 1 00 |
| 97. To hear judgment when cause on list for judgment, but judgment not given | 1 00 |
| 98. On taxation of costs | 1 00 |
| 100. On revision, per hour, when attendance required by Taxing Officer, or revision had on order..... | 0 50 |
| 101. On revision by County Court Judge on appeal..... | 0 50 |
| 102. To obtain or give undertaking to appear, when service accepted by a solicitor..... | 0 50 |
| 103. Attendance to file, or serve..... | 0 25 |
| 104. Attendance on warrant, or appointment, of Examiner, Referee, or County Court Clerk, per hour..... | 0 50 |
| To be increased in the discretion of the C. C. Judge to not exceeding per hour..... | 1 00 |
| 105. Attendance on County Court Clerk in special matters, per hour. | 0 50 |

ATTENDANCES—*Continued.*

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|--|--------|
| 106. Every other necessary attendance..... | \$0 25 |
| 108. On special and important points, and matters requiring the attendance of counsel, before Examiner, Referee, or Clerk, the Judge may, in lieu of the fees for attendance, allow a counsel fee when counsel attend the same, not to exceed \$5. | |

BRIEFS.

- | | |
|---|------|
| 109. For drawing briefs, five folios or under..... | 1 00 |
| 110. For drawing briefs, for each folio above five..... | 0 10 |
| 111. For drawing brief, per folio, for original and necessary matter .. | 0 20 |
| 112. Copy of documents, other than pleadings, per folio | 0 10 |

COURT FEES.

- | | |
|--|------|
| 114. Fees after statement of claim, or, where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before courts or any other step in the cause, and on judgments. No two fees to be allowed to either party when such proceedings are taken, or had, between the first day of any sittings of the courts (fixed by Rule 216, or R. S. O. 1887, c. 47, s. 12, as the case may be), and the first day of the following sittings so fixed | 0 50 |
| 115. Fee on certified copy of pleadings for judge | 0 50 |
| 116. Fee on every order, or judgment to the party obtaining the same | 0 50 |

AFFIDAVITS.

- | | |
|--|------|
| 118. Drawing affidavits, per folio | 0 20 |
| 119. Engrossing same to have sworn, per folio | 0 10 |
| 120. Copies of affidavits, per folio, when necessary | 0 10 |
| 121. Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath, and attendance to swear | 0 75 |
| 122. The solicitor for preparing each exhibit in town or country | 0 10 |

DEFENDANTS.

- | | |
|--|------|
| 123. Appearance, including attending to enter | 0 50 |
| For each additional defendant | 0 10 |
| 124. For limiting defence in action for recovery of land in appearance, besides above allowance for appearance; not to be allowed when notice of limiting defence served | 0 50 |

JUDGMENT, RULES, OR ORDERS.

125. Drawing minutes of judgment, or order, per folio, when prepared by solicitor, under directions of the C. C. Judge	\$0 20
126. Judgment for non-appearance on specially indorsed writs, and in action for recovery of land	0 50
127. Attending for appointment to settle or pass judgment, or order of Court, copy and service	0 50
128. When served on more than one party, the extra copies and services are to be allowed	
129. For every hour's attendance before proper officer on settling or passing minutes	0 50
To be increased in the discretion of the officer in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether	2 50

LETTERS.

130. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership, and when subject of suit relates to the transactions of their partnership	0 25
131. Common letters, including necessary agency letters	0 25
132. With power to the C. C. Clerk, as between solicitor and client, to increase the fee for special and important letters, to an amount not exceeding	1 00
133. Postages—the amount actually disbursed	
134. For correspondence during the progress of an appeal to the Court of Appeal a reasonable sum in the discretion of the Taxing Officer may be allowed not exceeding	2 00

SALES BY AUCTIONEER, OR REAL REPRESENTATIVE IN PARTITION SUITS.

135. Drawing advertisements for the sale of real or personal estate under the direction of the Court, including all copies, except for printing	1 00
And for each folio over five, per folio	0 15
(To be increased in the discretion of the C. C. Judge to a sum not exceeding ten dollars, when special information has been procured for the purpose of sale.)	
136. Copies for printing, per folio	0 10
137. Each necessary attendance on printer	0 25
138. Attending and making arrangements with auctioneer	0 50
139. Revising proof	0 50
140. Fee on conducting sale when held where solicitor resides	3 00
141. If solicitor is engaged for more than three hours, for every hour beyond that time	0 75
142. Fee on conducting sale elsewhere, besides all necessary travelling and hotel expenses, when solicitor attends with the approval of the real representative previously given	5 00

MISCELLANEOUS.

145. When it has been satisfactorily proved that proceedings have been taken by solicitors out of Court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefore in the discretion of the Judge.
146. Drawing bill of costs as between party and party for taxation, (including engrossing and copy for C. C. Clerk,) per folio. \$0 20
147. Copy, per folio, to serve. 0 10

COUNSEL FEES.

148. Fee on motion of course, or on motion in matters not special 1 00
149. On special *ex parte* motion or application to the Court (only one counsel fee to be taxed) 2 00
To be increased in the discretion of the Judge of County Court, who shall mark amount to be taxed on order of Court, if any, before taxation, to. 5 00
150. Fee on argument on supporting or opposing application to the Court or argument of demurrer, special case, or appeal 5 00
To be increased in the discretion of the Judge, to. 10 00
151. On consultations. 2 00
152. Fee, with brief, on assessment. 6 00
153. Fee, with brief, at trial 10 00
To be increased by the Taxing Officer at Toronto or the Judge (as the case may require) in actions of special or important nature and on appeals to the Court of Appeal, (on notice to the opposite party,) to a sum not exceeding. 25 00
(No charge to be made by either party in connection with such application)
154. On argument or examination in Chambers in cases proper for the attendance of counsel and where counsel attends. 1 00
To be increased in the discretion of the Judge to a sum not exceeding. 5 00
155. On argument of appeal in Court of Appeal, in the discretion of Taxing Officer at Toronto, not exceeding. 25 00
156. To attend reference to C. C. Clerk or Referee, when counsel necessary 3 00
To be increased in special and important matters requiring the attendance of counsel in the discretion of the County Court Clerk, not exceeding. 6 00
157. Fee on drawing, and settling, allegations in *præcipe* for revivor, in special cases, proper for opinion of counsel. 1 00
To be increased in the discretion of the C. C. Clerk to an amount not exceeding. 2 00
158. On settling pleadings, interrogatories, special cases or petitions, and advising on evidence in contested cases, in the discretion of the C. C. Clerk, not exceeding. 3 00

COUNSEL FEES—*Continued.*

159. On settling the appeal case and reasons for or against appeal.... \$2 00
To be increased in the discretion of the Taxing Officer at Toronto
in special and important matters to a sum not exceeding..... 5 00
160. When any fee is subject to be increased, in the discretion of the
Taxing Officer in Toronto, either party to the taxation may,
during its progress, require that such item shall be referred by
the Local Taxing Officer to the Taxing Officer in Toronto,
whose decision shall be final as to that item, but this shall not
prevent an appeal from such taxation.
164. On arbitrations, counsel fees may be allowed and taxed on the
same scale and conditions, so far as possible, as those herein-
before prescribed for counsel fees at trials.

NOTE 1.—In taxing costs between solicitor and client, the clerk may
allow for services rendered not provided for by this tariff, a
reasonable compensation as far as practicable analogous to its
provisions.

NOTE 2.—On appeals to the Court of Appeal where the fees are not
above provided for, the same fees and allowances shall be taxed
as are allowed for similar services in the County Court.

TARIFF B.

TARIFF OF DISBURSEMENTS.

(Referred to in Rule 1219, *supra*, pp. 96-7.)

The following fees and allowances shall be taken and received by the officers and persons herein mentioned in Civil Actions in the County Courts, and appeals therefrom to the Court of Appeal, in lieu of all fees payable to those officers and persons under the tariffs heretofore in force in the said Courts:—

REGISTRAR OF COURT OF APPEAL.

Setting down for argument	\$0 50
Certificate on discharging appeal	0 90
On every order in Chambers	0 50
For other services the like charges as are to be taken by the Registrars of the High Court for similar services.	

OFFICIAL AND SPECIAL REFEREES.

Filing and entering judgment or order	0 10
Every warrant or appointment	0 10
Administering oath or taking affirmation	0 20
Marking every exhibit	0 10
Copy of papers given out when required, per folio	0 10
Every attendance upon any proceeding or enlargement thereof or selling property	0 50
For each additional hour	0 50
Every certificate, if not longer than two folios	0 20
Filing each paper, or subsequent order	0 10
Taxing costs, including attendance	0 80
Making up and forwarding depositions, bills of costs and proceedings	0 10

OFFICIAL AND SPECIAL REFEREES—*Continued.*

Every special attendance out of office within two miles, per hour occupied by reference	\$0 50
Every additional mile above two for travelling expenses	0 10
Searching files in office	0 10

CLERKS OF THE COUNTY COURT.

Every Writ	0 50
Every concurrent, Alias, Pluries or Renewed Writ	0 40
Every appearance entered, and filing memorandum thereof	0 15
Every appearance, each Defendant after the first	0 10
Filing every Affidavit, Writ, or other proceeding	0 10
Amending every Writ or other proceeding	0 25
Upon payment of money into Court	0 30
Upon payment of money out of Court	0 30
Passing and certifying Record	0 50
Entering action for trial or assessment (including H. C. cases entered for trial at C. C.)	0 50
On setting down on the paper for argument every demurrer or special case	0 20
Setting down a cause for any other purpose	0 20
Subpoena, including filing Præcipe	0 20
Every Reference, Inquiry, Examination, or other special matter for every meeting not exceeding one hour	0 75
Every Reference, Inquiry, Examination, or other special matter for every additional hour or less	0 50
Fee on report made on such reference, etc.	1 00
Attending on opening Commission	0 50
Every Certificate made evidence by Law, or required by the practice including any necessary search	0 50
Every Certificate for Registration	0 20
Entering Certificate of Title or Conveyance, per folio	0 10
Every ordinary Rule or Order	0 30
Every Special Rule or Order, not exceeding six folios, per folio	0 20
Every Chamber Order	0 50
Every Interlocutory Judgment or Judgment by default	0 30
Every Final Judgment otherwise than Judgment by Default	0 50
Taxing Bill of Costs, and giving allocatur or certificate	0 80
Entering Order when necessary, per folio	0 10
Exemplification, or office or other copy of papers or proceedings required to be given out, per folio, besides certificate and seal when required	0 10
Examining and authenticating papers when copy prepared by Solicitor —every three folios	0 05
Every search, if within one year	0 10
Every search, if over one year and within two years	0 10

CLERKS OF THE COUNTY COURTS—*Continued.*

Every search, if over two years, or a general search.....	\$0 20
Every Affidavit, Affirmation, etc., taken before them	0 20
Entering Satisfaction on Record, and filing Satisfaction piece, including any necessary search.....	0 30
Every Commission for the Examination of Witnesses.....	0 30
Making up and forwarding papers, including bills of costs.....	0 10
Entering Exoneretur on Bail piece.....	0 20
For making the Entry required in the Debt Attachment Book and in Cognovit Book.....	0 50
Every Verdict taken, non-suit, Jury discharged, Record withdrawn, or rule or order of reference at the trial.....	0 50
Drawing appointments made by the Judge	0 25
Attending at every special hearing before the Judge under R. S. O. 1887, c. 53, s. 1, and at the taking Examination and Evidence and at Sittings in reference to the C. C. Judge from the H. C., not exceeding one hour	0 50
Every additional hour or less	0 50
Every appointment for taxation of costs or otherwise, made by C. C. Clerk.....	0 10
Every meeting under R. S. O. 1887, c. 53, s. 9, not exceeding two hours	2 00
For each additional hour or less (to be taxed by the C. C. Judge).....	1 00
For every Jury sworn	1 00
Every enlargement on application to the Judge in Chambers, including search, if marked by the Clerk.....	0 15

SPECIAL EXAMINER.

Every appointment.....	0 10
Administering oath or taking affirmation.....	0 20
Marking every exhibit.....	0 20
Taking depositions per hour.....	0 75
Fair copy for Solicitor, per folio (when required).....	0 10
Every attendance out of office when within two miles.....	0 50
Every attendance over two miles out of office—extra per mile.....	0 10
Every certificate	0 25
Making up and forwarding answers, depositions, etc., including filing <i>Præcipe</i>	0 25
For every attendance upon an appointment, when Solicitor or witnesses do not attend and examiner not previously notified.....	0 50

REAL REPRESENTATIVE.

The Real Representative acting under the Act respecting the partition and sale of Real Estate (R. S. O. 1887, c. 104) shall, in the case of proceedings being instituted in a County Court, be entitled to demand and receive for all services performed by him under the said Act, the same fees as nearly as may be as are allowed to Special Examiners for similar services.

TARIFF OF DISBURSEMENTS.

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CRIER.

Calling every case, with or without jury	\$0 50
Swearing each witness, or constable	0 15

COMMISSIONERS.

For taking every affidavit	0 20
For taking every recognizance of bail	0 50
For marking every exhibit	0 10

ALLOWANCE TO WITNESSES.

To witnesses residing within three miles of the court house, per diem	1 00
To witnesses residing over three miles from the court house	1 25
Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem	4 00
Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem	4 00
If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each cause only.	
The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.	

N.B.—In all applications and proceedings before the County Court Judges not relating to suits instituted in any Court of Civil Jurisdiction there shall be payable to the Clerks of the County Courts the same fees as in this Table so far as the same are applicable.

TARIFF C.

FEES OF SHERIFFS and CORONERS

IN CIVIL MATTERS IN THE COUNTY COURTS.

(Referred to in Rule 1232.)

1232. The fees and allowances set forth in the Tariff C appended to these Rules shall be taken and received by sheriffs and coroners in civil proceedings in lieu of all fees to which they have been heretofore entitled under the tariffs heretofore in force. See tariff, 2 Feb. 1874.

FEES PAYABLE TO SHERIFFS AND CORONERS.

GENERAL MATTERS.

Receiving, filing, entering, and indorsing all Writs, Pleadings, Rules, Notices, or other papers, each	\$0 10
Return of all Process and Writs, except Subpoenas	0 25
Return of Pleadings, Rules, Notices, or other papers	0 15
Every search, not being by a party to a cause or his Solicitor	0 30
Certificate of result of such search, when required (a search for a Writ against lands of a party shall include sales under Writ against same party, and for the then last six months)	0 75
Where a certificate respecting executions against lands is required, the sheriff, if so requested, is to include in one certificate any number of names in respect of which the certificate may be required in the same matter or investigation, but shall be entitled to the same fees as if one certificate were given for each name, provided that no greater sum than \$4 shall be charged or collected in respect of such certificate. (50 V. c. 7, s. 5).	

SHERIFFS' TARIFF.

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GENERAL MATTERS—Continued.

Every Warrant to execute any Process <i>neane</i> or final, directed to the Sheriff, when given to a bailiff	80 50
Every Jury sworn, or cause tried before a Judge	0 80
Every Letter written (including copy) required by party or his Solicitor respecting Writs or Process, when postage prepaid	0 30
Drawing every Affidavit when necessary and prepared by Sheriff	0 25

SERVICE OF PROCESS AND PAPERS.

Service of non-bailable Process, each defendant including affidavit of service.....	1 00
Serving Subpoenas, Rules, Notices, or other papers (besides mileage) ..	0 50
For each <i>additional</i> party served	0 25
Actual and necessary mileage from the Court House to the place where service of any Process, paper or proceeding is made, per mile....	0 13

ARREST AND ATTACHMENT.

Arrest, when amount does not exceed \$200.....	2 00
“ “ “ \$400	4 00
Bail Bond or Bond to the limits.....	1 00
Assignment of the same	0 25
Mileage going to arrest when made, per mile	0 13
Mileage conveying party arrested from place of arrest to the gaol, per mile	0 13
Bringing up Prisoner on attachment or <i>Habeas Corpus</i> , besides travel at 20c. per mile.....	1 00

ABSCONDING DEBTORS.

Seizing estate and effects on attachment against an absconding debtor	1 50
Valuators, each.....	1 00
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the Court or a Judge	
Drawing Bond to secure goods taken under an attachment against an absconding debtor, if prepared by Sheriff	1 50

REPLEVIN.

Precept or Warrant to Bailiff in Replevin	0 40
Drawing Notice for Service on Defendant in Replevin	0 40
Delivering Goods to the party obtaining the Order of Replevin.....	1 50
For Writ <i>De Retorno Habendo</i>	0 50
Drawing Replevin Bond	1 00
Assignment	0 25
All necessary disbursements for the possession, care and removal of property taken in Replevin.	

JURIES.

Notice of appointment for ballot of Jury	\$0 25
Notice to Clerk of Peace of such appointment	0 25
Fee on balloting Special Jury	2 50
Fee on striking "	1 25
Serving each Special Juror (besides mileage at 13c. per mile)	0 25
Returning Panel of Special Jurors	0 50
Keeping and checking pay list of Special Jurors' attendance, in each case	1 00

SALES, POUNDAGE, ETC.

Poundage on Executions, and on attachments in the nature of Executions, on the sum made	5 per ct.
(Exclusive of mileage, for going to seize and sell, and all disbursements necessarily incurred in the care and removal of property).	
Schedule taken on Execution, attachment or other process, including copy to Defendant, not exceeding 5 folios	0 50
Each folio above 5	0 10
Drawing advertisements when required by law to be published in the official <i>Gazette</i> or other newspaper, or to be posted up in a Court House or other place, and transmitting same, in each suit	0 75
Every necessary notice of Sale of Goods (not more than 3), in each suit	0 40
Every notice of Postponement of Sale, in each suit	0 20
The sum actually disbursed for Advertisements required by law to be inserted in the official <i>Gazette</i> or other newspaper.	

SEQUESTRATION.

Upon seizure of estate and effects under writ of sequestration ..	1 00
Schedule of goods taken in execution (including copy for defendant) not exceeding five folios	0 50
Each folio above five	0 10
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the Court or Judge (Poundage upon sequestration followed by sale and collection—as on other executions).	

WRIT OF POSSESSION.

Executing Writ of Possession and serving and executing Writ of Retitution, besides mileage	2 00
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WRIT OF ENQUIRY, ESCHEAT, ETC.

Presiding or attendance on execution of Writ of Enquiry, or under any Writ of Escheat, or other writ of a like nature	4 00
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SHERIFFS' TARIFF,

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WRIT OF ENQUIRY, ESCHEAT, ETC.—Continued.

Summoning each Juror in such case.....	\$0 50
Bailiff's fee summoning each Jury, mileage per mile	0 13
Hire of Room, if actually paid, not to exceed \$2 per day	
Mileage from the Court House to the place where Writ executed, per mile	0 13

CORONERS.

The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, execution and return of process, as allowed to Sheriffs for the same services above specified.

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